EAST-WEST INVESTMENT NEWS

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE No. 3/4 Autumn/Winter 1994

CONTENTS

I. REVIEW OF RECENT LEGISLATION

UZBEKISTAN: New foreign investment law
POLAND: Measures to promote exports
RUSSIAN FEDERATION: New rules on the registration of companies
UKRAINE: New regulations on foreign economic activities

IN BRIEF

CIS, Czech Republic, Hungary, Kyrgyzstan, Lithuania, Moldova, Romania

II. PRIVATIZATION EXPERIENCES: REAL PROPERTY TRANSACTIONS INVOLVING FOREIGN INVESTORS IN THE COUNTRIES IN TRANSITION

1. Property valuation in eastern Europe
2. Real property transactions and the legal situation in Poland
3. The importance of land title in stimulating property investment

III. STATISTICAL INFORMATION

1. General developments
2. Foreign investment in the CIS
3. Overview of foreign direct investment in Bulgaria

IV. NEWS ROUND-UP

1. Carol Cosgrove appointed Director of the UN/ECE Trade Division
2. Seminar on the problems surrounding real property transactions involving foreign and domestic investors in the countries in transition

V. INDEX OF PREVIOUS ISSUES

HIGHLIGHTS OF THIS ISSUE

* ***Uzbekistan implements new foreign investment laws.***

* ***New regulations on export promotion issued in Poland.***

* ***The Russian Federation creates new guidelines for the registration of private enterprises.***

* ***Recommendations for improving land law and property valuation methods in economies in transition.***

* ***Foreign Direct investment in Bulgaria approaches US$ 300 million.***

I. REVIEW OF RECENT LEGISLATION

Uzbekistan

New foreign investment law

On 5 May 1994, the Uzbek Parliament passed a new foreign investment law (the previous legislation was dated 14 June 1991 and was amended in July 1992). The main features of the new law are summarized below.

The law provides that a company with foreign participation may be created in three ways: by organizing a new company; by acquiring shares in a state enterprise; or by full acquisition of a state enterprise during privatization.

Foreign investors may participate in the equity of joint companies, banks, and insurance companies founded with local investors (both physical and legal persons). They may also establish 100 per cent foreign-owned enterprises, banks, insurance and other companies, purchase assets, shares and securities, and purchase rights to own and lease land. Intellectual as well as all other types of property rights are considered as foreign investments.

The provisions of the law do not provide explicitly for land ownership by foreign physical and legal persons. It is stated that foreign investors have the right to lease land and while purchasing buildings they also acquire the right to use the corresponding plots of land in accordance with the Republican legislation.

The companies with foreign participation can establish their subsidiaries and branches with or without status of a legal entity.

The law declares that foreign investments are not subject to nationalization. At the same time, they could be requisitioned by a special decision of the Cabinet of Ministers in cases of natural disasters, emergencies and epidemics. Should the need for requisition arise, foreign investors would be adequately compensated in line with the damage caused.

A special provision of the law concerns a guarantee against possible change in the FDI legislation. Foreign investors are assured that should subsequent laws worsen the investment climate, then their investments will be governed for 10 years by the legislation in force at the time the investments were made.

Exceptions from such guarantees only include laws adopted for the reasons of defence, national security, public order and environmental protection.

For the first time, the FDI legislation introduced a threshold for the amount of foreign equity in companies with foreign participation.

In the past joint ventures with high foreign shares (over 30 per cent) enjoyed certain privileges in the field of foreign trade, but *de jure* all companies are subject to the same investment treatment irrespective of their share in a joint venture.

From now on, to be considered an enterprise with foreign participation for the purposes of any concessions provided for such companies by this law, a venture must have at least a 10 per cent foreign share.

The law states that the legal requirements for foreign investors cannot be more strict than those for local physical and legal persons. It makes no special reference to tax holidays and other concessions, but stipulates that the Government can grant additional incentives for foreign investments in "priority" areas and regions.

It is further stipulated that projects with foreign capitalization are granted exemption from customs duties when the goods are imported for production purposes or for the personal needs of the foreign employees of such companies.

Companies with foreign participation may also export the goods and services they produce without licences (the same rule applies to imports for their own economic activity).

Joint ventures may be granted concessions in all spheres and forms of economic activities, provided they do not contravene the laws of Uzbekistan.

The law states that all profits obtained by foreign investors through legal activities can be transferred abroad without restrictions, and that profits in local currency can be used for reinvestment or utilized for purchase of foreign currency.

The new legislation introduces the concept of insurance for foreign investments and addresses its procedure in detail. Foreign investors can receive insurance protection against:

* expropriation or any other legal acts or administrative measures resulting in the confiscation of property, loss of its control or profits received from it (general non-discriminatory actions applied by the State to regulate economic activities are excluded from this provision);
* war or civil disorders;
* measures by the State's authorities concerning contractual obligations between insurers and investors;
* introduction by governmental bodies of restrictions on the exchange of local currency into other currencies and its repatriation;
* adoption of new legal acts discriminating against certain groups of investors;
* other forms of risk.

The system of insurance for foreign investment includes the State National Insurance Company and joint insurance companies with the participation of foreign investors. Some of the assets of the insurance organizations can be deposited in foreign banks as a guarantee of protection for foreign investments.

The new law represents a new step towards improving the legal environment for foreign investors. At the same time, many of its provisions are of declarative nature and the practical implementation will depend on Governments' and governmental bodies' instructions, clearly defining the actual regime for companies with foreign participation.

These latest measures undertaken by the Government show its commitment to market transformation reforms.

At the end of July 1994, under the decision of the Cabinet of Ministers of Uzbekistan, the internal convertibility of the local currency (the Som) was introduced. Physical persons may buy hard currency within the limits set for them; non-residents may exchange Soms into freely-convertible currency within the threshold of earlier sold sums (on presentation of the relevant receipt from the exchange bureau).

Physical and legal entities irrespective of the form of ownership have the right to open hard currency accounts in authorized banks and receive interest and income on such accounts.

The non-cash exchange of Soms into hard currency is to be carried out through the Republic foreign currency exchange in the manner determined by the Central Bank.

Poland

Measures to promote exports

In 1993 the Government adopted a general outline for economic and financial assistance to export promotion. In the implementation of these provisions a number of measures were undertaken in 1994.

Thus, in January 1994 tax reliefs for companies investing in the expansion or modernization of their production capacities were introduced. At the same time the Government decided to discontinue the previously existing system of tax credits for new foreign investors and companies with foreign participation founded after 1 January 1994.

New tax incentives for investment are available to both local and foreign companies and are provided in the form of accelerated depreciation of investments. Companies may deduct the entire amount of their investments (provided they are supported with relevant documents) from the tax-due profits, but such a deduction may not exceed 25 per cent of the total taxable income of a company. Additional concessions are granted for exporters who, having eligible investments, may deduct expenditures for an amount up to 50 per cent of the taxes due. To be eligible for these concessions, companies must have a profitability rate of 8 per cent during the year in which the investments were made. For large exporters this ceiling is lower (4 per cent profitability). In order to qualify for a large exporter regime a company must meet the following requirements: specialization in manufacturing products for export, receive at least 50 per cent of their total earnings from exports and have an annual value of exports no less than ECU 10 million.

Special incentives (reimbursement of customs duties or imports with duty reliefs, refunding of VAT tax) on the purchase of raw materials, semi-finished products and components for export production are also granted to so-called "reliable" exporters. The criteria to be met to benefit from such concessions are: the company must have a minimum capital of Zl 50 billion to ensure collateral security for the loans guaranteed by the Treasury; exports to the value of at least US$ 5 million or amounting to a minimum of 25 per cent of the company's sales in the preceding year; the company must be operational for at least three years and not have outstanding debts vis-à-vis tax and customs authorities

The Government also created a system of export credit insurance which did not exist in the past. In accordance with the agreement between the Export Credit Insurance Corporation (State company) and a number of major commercial banks, an exporter will be able to receive short term loans from these banks to finance exports, provided the transaction is insured at the Export Credit Insurance Corporation.

It is anticipated that banks will fix an interest rate for such insured contracts at a lower level, thus increasing competitiveness of export-oriented companies.

Besides insurance against commercial risks offered by the above-mentioned corporation, the Government plans to introduce more comprehensive insurance against a wider number of commercial risks and also against risks related to political situations or accidents. It is expected that this insurance will be in the form of a loan from the central budget, or insuring loans from commercial banks.

Among recent developments of interest to investors in this country is the much-awaited completion of negotiations with the London Club creditors. The final agreement signed on 13 September 1994 provides for a 45 per cent reduction in Poland's foreign debt with the repayment term of 30 years. This deal is expected to facilitate the country's access to financial markets and creates opportunities for a greater influx of foreign capital.

Foreign investments at the end of July 1994 in Poland were estimated by the State Foreign Investments Agency at US$ 3.7 billion. The overall commitments by the 221 major investors already established in the country could amount up to an additional US$ 4.7 billion in the coming years.

Nine foreign investors declared commitments exceeding US$ 100 million each and fifteen more have committed between US$ 40 and 100 million.

Russian Federation

New rules on the registration of companies

In July 1994, a new procedure for the registration of companies was set by Presidential Decree. These rules apply also for companies with foreign participation and for foreigners engaged in entrepreneurial activities independently.

In accordance with new regulations the following documents are to be submitted for state registration:

- application for registration by the founders of the company;
- statutes of the company (indicating the legal status of a company; procedure of capital formation; governing bodies and their composition; procedures of distributing profits, creating additional funds and re-organizing and liquidating a company);
- decision or agreement on founding a company (with information on the legal status of the founders, place of their registration for legal bodies and of permanent residence for physical persons);
- size of the statutory capital, distribution of shares, ways and procedures of making contributions to the capital;
- documentary proof that at least 50 per cent of the capital (as shown in the founding documents) has been paid in or contributed in another way;
- proof of payment of the state registration fee.

The decree introduces minimum capital requirements for newly founded companies. For companies with foreign participation, the level is fixed at no less than the equivalent of 1 thousand minimum salaries, which makes, at present, R 20.5 million or about US$ 7 thousand at the current exchange rate.

For state enterprises founding joint ventures with foreign companies, it is also necessary to have an authorization from the State Committee on Management of State Assets or another relevant state body.

The decree does not allow registration authorities to demand any additional documents besides those mentioned above. It also states that all registration formalities should be finalized within three days from the date on which the required package has been submitted (registration can be sent also by post; in this case the time limit is 30 days).

New registration rules should simplify and accelerate the process of establishing new companies by removing many bureaucratic obstacles.

Other recent regulations include a package of decrees signed by the President on 19 September 1994 which creates opportunities for developing financial leasing and for participation of private investors in projects co-financed by the State

The purpose of the first decree is to create the legal and institutional infrastructure for financial leasing. The decree also calls for development of leasing in the defence industry and in agriculture.

The second decree allows private companies to participate in tenders for State investments organized by the Government. To be eligible, an investor must be able to provide not less than 80 per cent of the value of the project by utilizing its own means and credit, including foreign investments. The investor's own resources cannot be less than 20 per cent of the project's value.

On 29 September 1994, the Government approved an edict on accelerating the promotion of foreign investments. The document calls for ameliorating the legal regime for foreign investors, establishing a system of insurance for foreign investments, utilizing collateral to promote foreign investments, improving information assistance to investors, etc.

Ukraine

New regulations on foreign economic activities

As from the end of July 1994, in accordance with the latest instructions of the National Bank, all companies conducting foreign trade operations must regularly submit declarations on their hard currency holdings. Such declarations are to be presented to the National Bank and to tax authorities after which time each company will receive a declaration certificate.

Presentation of the declaration certificate will be required to conduct operations with hard currency at banks, to submit export or import goods for customs inspection, and to carry out any foreign economic activities.

Another measure concerning foreign trade was the Presidential Decree of 25 August 1994 to prevent exports of Ukrainian goods at prices that could be considered as dumping, thus creating possible trade conflicts with foreign States.

There are quite a few cases when anti-dumping procedures have been opened against Ukrainian-manufactured goods in the EU, the United States and other countries.

The Decree aims at safeguarding the trade and economic interests of the country and creating a favourable environment for exports to foreign markets.

Another Presidential Decree published in September 1994 concerns measures to implement a unified governmental policy on regulating imports. Under the decree the interdepartmental commission, consisting of representatives of the National Bank, and of the Ministries of Foreign Economic Relations, Industry, Justice, etc., will be formed.

This commission should undertake steps to reduce the trade deficit, protect domestic companies from unfair import competition, reduce the volume of non-essential imports, ensure the rational use of hard currency funds, and prevent imports of poor quality goods.

The decree calls for the commission to prepare proposals on:

* a mechanism of unilateral restrictions on imports in line with the GATT norms;
* a draft list of goods for essential imports;
* a draft list of goods for import substitution, the production of which could be organized locally;
* a methodology to verify whether the prices of imported goods are economically justified with the view of introducing necessary tariff regulations;
* the introduction of differential excise duties on non-essential imports depending on their country of origin and quality, etc.

The Commission is also entitled to look into imports of goods at dumping or subsidized prices.

A number of amendments to hard currency regulations were also adopted. On 23 August 1994, the Presidential Decree on hard currency operations was signed. The purpose of the decree is to liberalize the foreign exchange regime by closing the gap between the official exchange rate of the Karbovanets and the free-market rate. It is expected that the official rate will be shortly increased and will be revised regularly on the basis of a special formula, which takes into consideration the balance of payments, money emission and the inflation rate.

It was also announced that the limit for the obligatory sale of foreign currency for exporters was scaled down. Thus, companies will have to exchange at the lower official rate only 30 per cent of their export earnings (not 50 per cent as in the past).

On 29 September 1994, a preliminary agreement between the IMF and the Government was reached. Once the agreement is approved by the IMF board, Ukraine will receive US$ 360 million from the IMF Systematic Transformation Facility.

This agreement is contingent on the government programme of economic reforms, including the liberalization of foreign exchange markets, the acceleration of privatization, cuts in social spending, strict control over the budget deficit, and other items.

At the end of October 1994, it was announced that the Government prepared an edict on introducing a single exchange rate for the Karbovanets. The introduction of the single official rate forms part of a package of measures agreed during negotiations with the IMF.

The new regulations are being screened by lawyers with the view of assessing its conformity with Ukrainian legislation.

IN BRIEF

Commonwealth of Independent States (CIS)

On 8 July 1994, during the Summit Meeting of the Heads of States of Kazakhstan, Kyrgyzstan and Uzbekistan, the decision to create a common economic zone between the three countries was announced. This grouping was declared to be open for the accession of other CIS member States. The three countries proclaimed their intention to coordinate policies in the spheres of taxation, foreign currency, trade, investment, customs, and migration with the aim of promoting economic, trade and other types of cooperation between the countries to ensure equal opportunities and guarantees for all economic operators, and to provide incentives for enterprises.

No efforts have been made so far to institutionalize this agreement. The place of this grouping within the CIS and relations with other CIS member States are not clear at the moment, particularly in view of the latest integration developments in the CIS.

On 21 October 1994, during the CIS Heads of States Summit Meeting, an agreement on the establishment of the Interstate Economic Committee was signed. The new body is expected to coordinate economic policies and to create the necessary conditions for founding customs and payments unions.

An agreement on the basic principles of the CIS payments union was also signed. It calls for removing restrictions on: national currencies as a means of payments for current operations, choosing the currency of payment between partners, the development of national foreign exchange markets for operations in local and other currencies, a single exchange rate for all kinds of external economic operations defined by market forces, the right of non-residents to freely use receipts in local currency, etc.

In spite of the optimism over the future integration process expressed at the signing ceremony of these agreements, many experts believe that it is primarily a declaration of political willingness to cooperate, while the actual implementation will be more difficult and subject to the political and economic considerations of the partners. It could be noted in this context that a number of the CIS member States made certain reservations while signing the agreement on the Interstate Council.

Czech Republic

In August 1994, the National Bank approved new rules on banking activities. New regulations were necessitated by serious financial problems and difficulties experienced earlier this year by a number of local banks. The new rules provide, *inter alia*, for a new principle of obligatory deposit insurance of up to CK 100 thousand per depositor.

Simultaneously, a new banking law is being drafted which will call for additional reserves to be created by banks and for restrictions in lending activities when they exceed certain levels of the bank's capital-to-asset ratio. Should these provisions be adopted they will probably require branches of foreign banks which are actively engaged in credit operations on the Czech market to be transformed into subsidiaries and/or to significantly increase their capitalization.

Hungary

In line with the Government's policy to provide the same investment and tax regime to all resident companies irrespective of foreign participation, the Government, in June 1994, took a decision on extending certain tax allowances granted to foreign investors to their partners under joint projects.

It is declared that if a foreign investor is entitled to a reduction in a profit tax as a result of reinvestment of revenues, the local Hungarian partner to this joint venture shall also be eligible for equivalent tax allowances once all the required criteria have been met.

Under the decree, tax concessions for foreign investors are applicable for reinvestment profits received during 1993.

Kyrgyzstan

In July 1994, the IMF approved a SDR 70.95 million credit to support the country's programme of economic reforms.

In August 1994, it was announced that a stock exchange, the first among the Central Asian States of the former Soviet Union, had been founded in the Republic. The stock exchange is expected to trade primarily in privatization vouchers and also in state treasury bills and other securities.

Lithuania

In July 1994, the Parliament, allegedly under the pressure of the farmer's lobby, decided to increase customs duties on a number of imported agricultural products.

Import duties were significantly increased on butter, eggs, fish, milk, and meat; other goods on the list include certain fruits and vegetables.

Moldova

From 1 September 1994, in accordance with the latest regulations issued by the tax authorities, a new tax coding system for businesses was introduced. All companies, including those with foreign participation, are to receive a special fiscal code which will be issued to them after filing a declaration and registering with the tax office.

The fiscal code must be quoted in all financial operations with the National Bank, commercial banks and customs authorities.

The purpose of the new regulations is to control more effectively the payment of taxes and to fight tax evasion.

Romania

The draft of the new law on profit tax is being debated in the Government. Some of the provisions of the law are aimed at promoting small- and medium-sized businesses. It is suggested that the corporate tax rate should be linked with the actual profits and size of a company. The draft provides for a tax for companies with an annual turnover of more than 10 billion lei and employing more than 299 persons to be fixed at a level of 38 per cent.

For small companies, the calculations of the amount due in taxes will depend on the volume of profits and the share of profits used for reinvestment purposes.

For businesses primarily engaged in agricultural activities, the tax will be reduced to 25 per cent, whereas companies receiving a major part of their profits from gambling and similar operations will be subject to an additional 22 per cent tax.

It is anticipated that foreign companies with permanent offices in Romania will pay extra 6.2 per cent above the basic tax rate.

It is expected that the new law will enter into force from 1 January 1995.

According to the latest data by the Romanian Development Agency, the number of companies with foreign participation exceeded 39 thousand, with the total amount of foreign investment approaching US$ 1 billion.

Germany ranks first both in terms of invested capital (US$ 93.3 million) and in the number of joint ventures (4.4 thousand). Other top investor countries include Italy, France, the United States, the Netherlands, and Canada.

In terms of the number of joint ventures, the majority of partners besides those from Germany, came from Italy, Turkey, Syria, Jordan, the United States, Lebanon and China.

II. PRIVATIZATION EXPERIENCES: REAL PROPERTY TRANSACTIONS INVOLVING FOREIGN INVESTORS IN THE COUNTRIES IN TRANSITION

The following presentations were amongst several delivered to the Seminar on the Problems Surrounding Real Property Transactions Involving Foreign and Domestic Investors in Central and Eastern Europe, held at the Palais des Nations, Geneva, 5 September 1994. The views expressed in these presentations are those of the authors and not those of the United Nations.

1. "Valuations in Eastern Europe"

by Mr. John Verpeleti, Director, Real Estate Services, Price Waterhouse Corporate Finance, Budapest, Hungary

I have been asked to discuss with you today the issue of valuations in eastern Europe and the problem of valuing real property, i.e. land or commercial buildings, in the absence of a fully-

functioning real property market. While my address draws on my experience in Budapest, it is clear to me from my more limited experience in other east European countries, and from extensive discussions with my colleagues in the region, that the issues involved are essentially the same throughout the region.

Why are valuations important?

The first question to address is why valuations are important in any economy, and not just in nascent market economies. The answer is quite simple - they are powerful negotiating tools, they can make or break deals, they can persuade or dissuade investors to invest and they play an important part of commercial lending practice. They are part of that group that I would describe as "business infrastructure".

If we become simplistic about it, the valuation exercise is nothing more than interpreting or analyzing how a market acts and applying those findings to the job at hand. It is typically the valuer's job to assess at which point two reasonable and well-informed parties, who are under no special compulsion to act, will come together to conclude a transaction. Value flows from demand, which can only be created if a property or asset can be put to some beneficial use. If there is no demand for a property, it is difficult to see how it can have value.

Methods of valuation

I was specifically asked to explain the different methods of valuation so that a better insight into valuation issues can be gleaned. Although there are many and varied techniques, I am restricting my commentary to the five best known and which have, or could have, application in eastern Europe. Briefly, they are:

- Market Comparison Method
- The Cost Approach
- Income Approach
- Discounted Cash Flow
- Residual Technique

Usually, one of these will lend itself to the type of property and the circumstances better than others, but every effort should be made to support the conclusions of the primary method of valuation with at least one of the others.

The Market Comparison Method is clearly the one to be favoured in most circumstances because it provides the clearest and simplest evidence of the way the market is thinking. The theory is easy: five identical houses in a row and four sold yesterday at US$ X - the value of the fifth, all things being equal, will also be US$ X. Simple, really, but as we know, there will never be five identical houses in a row, and we also know that four of them won't have been sold the day before a valuation takes place.

I will say more of the *Cost Approach* later, but a few words now are appropriate. The technique has limited application, generally speaking, but has an exaggerated importance in the east European context at present. This is partly because of the absence of sales to guide the valuer and partly because the valuations required for privatization purposes, which comprise a substantial part of east European valuation instructions, necessarily make an assumption of continuing owner occupation and justify use of the approach. The approach is based on the theory of "substitution," i.e. a hypothetical purchaser should not have to pay more for a property than the *cost* of replacing it. Its use can be justified if there is no market evidence, but it must be noted that it ignores demand and supply considerations which are so fundamental to valuation thinking. When one purchases a car for instance, the purchaser does not say I will pay for the cost of 4 wheels, plus 1 brake pedal, plus 1 steering wheel, etc. He will pay US$ X because that is what cars are being sold for.

The Income Approach now finally has some relevance in eastern Europe because the first signs have emerged that an investment market is forming. This approach merely exploits the relationship which exists between income (or the rent of a property) and the capital investment, and is only suitable for investment properties, or those which are typically income producing (i.e. rented). A property may be let on a yearly basis for US$ 100 and if it was purchased yesterday US$ 1,000, the return is said to be 10 per cent. The investor when purchasing the property on this basis has weighed up the perceived risks and benefits in doing so and has encapsulated his thoughts in one single number. In mature markets, patterns or broad consistencies emerge making the exercise reasonably simple. In Budapest, there is now concrete evidence, generated by sales, that an acceptable return for prime office buildings is about 12 per cent.

The Discounted Cash Flow technique has really only gained professional acceptance over the last 20 or so years, but some courts in the English-speaking world have yet to fully embrace it. It is an approach which is generally only suitable for investment or development projects. Put simplistically, the valuer charts over a given investment horizon the expected

performance of the property in cash flow terms, i.e. inflows and outflows. One of two following actions can then be taken:

1. The valuers insert their return requirement (say 30 per cent per annum) and establish how much they can spend on the purchase of a property to achieve that return (this is known as Net Present Value);

2. Alternatively, if they know the purchase price, they establish the return the project generates under the expected scenario (this is known as the project's Internal Rate of Return).

The Residual Technique has various alternative names and is used for potential development or re-development properties. It essentially produces a land value or justifiable purchase price after a series of calculations. In a development scenario, one first calculates the project's expected value on completion. Then, all expected project costs, including financing and profit, are subtracted from this figure. The result will indicate the amount which can be justified to purchase the property to carry out that specific development project. This is an important point - a different development scenario will, for obvious reasons, produce a different, justifiable purchase price.

Valuation reports

To earn the professional respect it deserves, a valuation cannot be based on a cursory examination of the property market or the subject property. At a minimum, every valuation report should contain the following headings or explain the reason for their exclusion:

Purpose and Basis of Valuation, Date of Valuation, Assumptions or Limiting Conditions, Date of Inspection, Title Particulars and *Ownership*, Land Details, Locations, Details of Buildings and Other Improvements, *Planning/Zoning Issues*, Details of Any Other Encumbrances, *Most Probable Use*, *Market Commentary*, Other Matters of Importance, *Valuation Statement* and Conclusions or Recommendations, if relevant, and Appendices.

Clearly, to report on all these issues, extensive and thorough investigations are required. I make this point because of a recent experience in Hungary. Not long ago, I was instructed to review a valuation submitted to a bank for mortgage security purposes. My valuation for the bank represented 5 per cent of the valuation submitted by the client with the loan applicant. A discrepancy of this order was responsible for making us double and triple check every fact we had acquired in our investigations.

The property in question had clearly not been inspected by the first valuer - half the property was swamp land, the site was not serviced and, above all, planning constraints meant that development of the property was prohibited. The property for all intents and purposes, could not be used, yet had been valued using rates for commercial development sites.

Further, the report failed to consider many of the issues mentioned above, including the site's zoning and the then-current conditions in the property market.

The original valuation, in accordance with Hungarian law, also made the comment that the document was only valid for six months; however, it is highly improbable whether anyone can, with certainty, predict what the market anywhere will be doing in six months time.

The end result was that the bank readily accepted our findings because the evidence before it was overwhelming. However, this example reflects poorly on the existing profession and it is therefore appropriate to consider remedial action.

Current practice

Regrettably, in much of eastern Europe, the associations between use, demand and supply issues, and value are not widely enough understood. Current practice appears to be to use cost evidence to determine value.

An example of the tenuous link which exists between cost and value is provided by the classic text-book scenario. A developer can build a hotel for US$ X, but if it cannot attract customers, for whatever reason, its value as a hotel is rather small. A recent road diversion may, for instance, significantly reduce the amount of passing traffic, causing a drop in the hotel's trade. The *cost* of the hotel in the before and after scenarios remains the same, but its *value* has changed significantly.

In short, current practice pays insufficient regard to the way the market thinks or acts. Again, if there is no one to buy (and in the east European context, broadly speaking, this concerns industrial property because of the over-supply situation), cost-based valuations fail to recognize market mechanics. Value assessment is about identifying the point at which a

willing seller and willing buyer will come together. It is not an assessment of the motivations of one side of the transaction only.

Impact on business

So what happens if a commercial and professional property market is hindered in its development or if valuations have not yet become recognized as an important ingredient to the wider business decision-making process? Or, in other words, what can potentially happen in the east European environment?

Firstly, and perhaps most obviously, a tool which may be useful in eliminating some risk or uncertainty is under-utilized.

By extension, negotiations can become unnecessarily protracted with the result that potential investment activity is stifled. The decision-making process is therefore slowed down.

Further, if commercial banks are not adequately geared to proved property finance then the market is deprived of a facility which fuels development, namely mortgage funding. This is certainly the case with many banks in eastern Europe which have limited experience in commercial lending.

Finally, there is a real risk that artificial features of the pre-existing market are retained. In Hungary, for instance, the retail sector has failed to fully develop to its ideal potential because the market has yet to be freed of the dreaded rental right arrangements; much property is still in the hands of local authorities, resulting in too infrequent arms-length commercial activity.

Strategy

The problems I have highlighted need to be attacked from several important directions. I know that in some east European countries significant measures to this end have already been taken, many of which have been sponsored by either British or American professional bodies.

Appropriate academic standards for practitioners

A man in the street cannot usually value a US$ multi million complex. It is difficult to see how such a person's skills in this area will be enhanced if he completes a three minute privately- or publicly-run course, as I know exist in some countries. Academic standards similar to those in the English-speaking countries will do much to solve this problem.

Professional standards

The education process does not stop with the academic side. Unless appropriate professional standards are developed so that accountability exists, we are only half way there. Professional bodies that monitor standards and performance must be set up, so that people representing themselves as experts are answerable, in one way or another, to a body comprised of their peers. If a valuer expects his opinion to be treated seriously, he must subject himself to certain common standards. In Hungary, at present, four such bodies compete for this right, creating a situation that is clearly unsatisfactory and counter-productive.

I would argue very strongly that valuations are an integral part of business life. But perhaps the best evidence that this idea has not yet been fully embraced in eastern Europe is the fact that valuations are often thought to be a matter for a client and his valuer to negotiate. Nothing could be further from the truth since the purpose of the valuation is for the valuer to provide a professional and independent opinion. Only when the element of professional accountability is introduced into the marketplace will this standard become a realistic expectation.

Information networks

It almost goes without saying that quality decision-making can only be made with quality information and, unfortunately, this is sadly lacking in most east European markets. While it is perhaps understandable that vendors or purchasers may be reluctant to disclose sales particulars to professionals unknown to them, there needs to be a far greater level of information exchange at least between practitioners in the field. I have regularly been denied important information from agents or so called valuers who demand payment for the service. Players must realise that this is a two way street and that if everybody refuses to cooperate, it is only the market which suffers.

Perhaps the best example of bad information filtering through a market is supplied by the office situation in Budapest. Everybody knows, as it were, that rents for A grade space in Budapest hover around the monthly rate of 45 DEM per m^2. What people do not know is the games that are played with this number -what the landlord quite often does not say is that he has calculated his area using a different method. This means, for instance, that sometimes he includes more than the occupied area for calculation purposes. The effective transaction rate is therefore

much greater than 45 DEM per m^2 per month. The result is that the market continues to work imperfectly if such information is not exchanged routinely and investment decisions are made on the basis of wrong information.

Acceptance by business community

Much valuation work at present is still driven by privatizations - in other words, there is a legal requirement that they be carried out. I am not for a minute suggesting that we should legislate to have valuations carried out for all sorts of business purposes, but I do think there is a requirement for their more formal use. In western economies, for instance, banks use them to screen mortgage applications and, indeed, in many countries, valuations are a taxation base, or are used for lease reviews. Too often, I hear that in Hungary lessors not prepared to accept periodic reviews of rents to market levels, as assessed by valuers, because they believe valuers can be encouraged to be a little too creative with their numbers. Of course, if the profession has such a poor image, it is difficult to see the wider business community warmly embracing valuations as an integral part of business life.

Remove artificial components still in the system

In the Czech Republic, for instance, valuation methods are still statutorily prescribed although moves are afoot to eliminate the reliance on cost methods of valuation and to remove the occasional linkage to certain German value levels. The arguments are compelling to move away from this type of artificial business environment to a system of market-based valuations, i.e. using transactional evidence to form valuation conclusions.

My comments above may in many respects appear negative, but they are indeed well-intentioned and I hope taken as being both constructive and instructive. It is only after these difficult issues are tackled that less-imperfect practices will become the norm in the eastern Europe markets which are changing and maturing so rapidly. All we have to contend with then are real estate cycles and recessions!

2. "Real Property Transactions and the Legal Situation in Poland" *by Mr. Ronald A. Dwight, Director, IRIS-Poland Project, Poland*

I appreciate the invitation of the United Nations Economic Commission for Europe to comment on Polish collateral law reform. The lack of an effective collateral law in Poland is one of the principal obstacles to the development of modern finance in Poland and a block to the development of the entire banking system. Poland cannot reasonably expect to receive foreign investment of the estimated US$ 50 billion needed in the next decade with the present collateral environment. Anyone who argues that Poland now has a pledge system which, while complicated, is commercially effective, is mistaken. My comments will cover first, the bad news - the current state of affairs; second - why this situation has not changed for three years; third, the good news - the excellent proposal which the Minister of Justice has already distributed for interministerial discussion; and finally, suggest what the United Nations Economic Commission for Europe can do to help.

The bad news - the current legal situation

Article 1025 of the Polish Code of Civil Procedure lays down the basic procedures a creditor bank goes through in order to redeem a security interest: the trouble and expense of a full scale lawsuit, the need to win a judgment, and the need for the collateral to be still available for the bailiff or komornik to seize and sell (the latter, it should be noted, generally gets 25 cents on each dollar raised from the sale). The proceeds of the sale must be distributed after the costs of the sale have been subtracted (as Section 1025 provides) in the following order: (1) costs of the execution proceedings and alimony (if debtor is a natural person); (2) wages and unpaid pensions; (3) taxes, whether registered or publicly noted; (4) usufruct fees - essentially state ground rents; (5) any bank loans; and (6) secured creditors. Thus even if a bank is not a secured creditor, it ranks on the same level as banks who are secured creditors. A creditor bank is fifth in line in the best of circumstances. If a creditor is not a bank but just an ordinary secured creditor, under Section 310 of the Civil Code and 1026 of the Code of Civil Procedure, assuming something is left over after banks get paid, the creditor with the most recent pledge is paid first.

The most disturbing thing about Section 1025 is that tax claims, known or unknown, can always erode any collateral, and they do not have to be registered or publicly listed anywhere. In addition, it is invariably difficult to obtain certificates from the tax man attesting that all taxes are paid in full. We call these "secret tax liens," and they are the bane of any investor in this part of the world. The simple notation of a clerk at the Ministry of Finance prior to the sale, even years after a mortgage has been registered, can evaporate the collateral held by a creditor moments before the bankruptcy court gives final approval to award it the creditor. In every bankruptcy proceeding, it is a waiting game to see if

the tax man will make an appearance at the last minute to take all. Recently, a foreign company which had purchased a piece of real estate with the best and most expensive legal advice available in Poland found that two years after the transaction closed, the Ministry of Finance claimed that, since the bankrupt seller had not paid its taxes in full, the title was defective. The buyer is left with a lawsuit against another government ministry which guaranteed good title. Indeed, every piece of Poland and every object might be collateral for the state treasury, but it's often impossible to find out if such a lien is there.

The Section 1025 priority given to all banks, whether secured creditors or not, means that if bank #1 takes a security interest in a debtor's property, and then the debtor gets an unsecured loan from bank #2, in bankruptcy, all banks share equally. Thus any security interest is liable to be eroded if your debtor takes out any other loans at a later date from a "bank".

The lack of a central register for collateral allowed massive fraud to occur in the early part of the transition to the market economy. Under present law, each bank keeps its own collateral register. Case studies were prepared for IRIS by the Gdansk Institute of Market Economics illustrating how debtors used the same collateral at a number of banks, took the loan proceeds, and disappeared with the collateral. Bankers, with painful experience with Poland's collateral law, now routinely demand the only worthwhile collateral - a cash deposit in their bank for 150 per cent of the loan amount to cover principal and interest. This means somewhat bizarrely that only if you have the money, can you borrow it!

Why has the problem not been quickly resolved?

As an institutional economist, I believe that a nation's wealth which is widely distributed and enduring is a product of a legal and institutional infrastructure which carefully defines and protects individual rights. Only in such an environment are individuals willing to postpone consumption to save and invest. Legal infrastructures are not changed overnight, but like vast buildings are constructed brick by brick. The transition to a market economy legal infrastructure is a work of decades not years.

Poland began the transition with a legal infrastructure considerably better than most of its neighbours owing to its pre-war legacy. It was easy to incorporate and get going. But now, we are finding that businesses are working in an impossible financial environment. Why? Let me speak about the legal reform environment in Poland.

The community of top civil and commercial lawyers in Poland and the other former communist states is very small, because for forty-five years or longer the vast majority of law students studied criminal law. Those who studied civil and commercial law in Poland since the war have been a small group although often of very high quality. This demographic reality means that the Ministries of Justice in this part of the world and governments generally are still almost exclusively staffed by the criminal lawyer *srodowisko*. The lawyers are naturally keen to retain their positions and will not easily give ground to a group regarded as peripheral for half a century.

The Commission for Reform of the Civil Code appointed to put matters right and whose membership includes the top civil law minds in Poland has not been given the resources it deserves. It has a budget for example, so small that it could not afford to pay for train tickets for top experts to attend meetings in Warsaw.

Despite this situation, Prof. Witold Czahorski, Chairman of the Commission for Reform of the Civil Code, and others with the support of Hanna Gronkleziwicz Waltz, President of the National Bank of Poland, and with technical assistance from IRIS to underwrite research, have worked for two years to draft a new Polish collateral law. Let me emphasize that only Polish lawyers, bankers, and academics can do this job properly. Earlier efforts to draft a Polish collateral law in London or New York were not only an insult to Polish legal expertise, but produced statutes whose enactment would have seriously disfigured Poland's legal structure. In my opinion, foreigners cannot draft effective laws for these economies. A local coalition of experts is necessary to draft laws that fit property into the legal environment and to implement laws which they understand and support as their own work. I could give several examples where foreign drafted laws have been enacted and left unused or unenforced.

The good news - the current collateral draft and programme

The good news is that this situation has now changed dramatically. The Minister of Justice's top priorities include collateral law reform, the creation of a central lien and economic registry, and a Commission for Reform of the Civil Code with a

budget - still too small but growing. Last March, the Commission finished the main work on the draft collateral law. We would appreciate comments from the legal experts working under the auspices of the United Nations Economic Commission for Europe on this draft law. The proposal calls for a central lien registry, permits all banks in Poland (and later other creditors) to file liens, abolishes secret tax liens by requiring the tax man to file his liens in the central registry or to go to the back of the line, and permits creditors to repossess collateral and to have a notary public sell it without court proceedings.

What the Economic Commission for Europe can do to help in this reform

Those in the financial community can continue to emphasize the importance of a new collateral law to all sectors of the Polish Government. This means putting the enactment of a new collateral law explicitly into the conditions of disbursement. We cannot assume that Poland will enact this reform because it is rational and logical to do so. There are unfortunately many people here in business and government who regard the current atmosphere of legal confusion as well suited to their business methods. The World Bank has been helpful in this, but not as forceful as it might have been. Specifically, those dealing with the Ministry of Finance must emphasize that secret tax liens be registered in the central registry. Clearly the tax department of the Ministry of Finance will be opposed to giving up its first position in the line of creditors. It should be emphasized that the continuation of the secret tax lien system will mean dramatically lower foreign assistance and lending.

More effort is required to persuade governments to put more funding into supporting reforms in the legal infrastructure by locals. This means money for carefully selected groups of experts to hold meetings, to do research, to hold conferences, to travel to neighbouring jurisdictions, and to support civil and commercial law programmes in law schools. It also means supporting the judiciary with reasonable salaries, conferences, and other support. Poland's excellent and honest judiciary is being threatened by very small salaries, case overload, and its inevitable outcome - creeping corruption.

In summary, we have probably put the cart before the horse in the development of an effective road to a market economy: millions for privatization, but little to build the legal foundation for the financial road upon which privatized companies must travel.

IRIS is a project of the Department of Economics University of Maryland, USA, on collateral reform in Poland and in other countries and is a recipient of funding and support from the United States Agency for International Development. For further information readers can contact: IRIS-Poland Project, c/o the American Studies Centre, Warsaw University, Ksawerow 13, 02-656 Warsaw, Poland, Tel/Fax.: (48 22) 45 25 12 or 45 18 56.

3. "The Importance of Land Title in Stimulating Property Investment" *by Mr. Peter Welburn, Partner, Holman Fenwick & Willan, London, United Kingdom*

Since the latter part of the 1980s much progress has been made in the formation of market economies throughout central and eastern Europe. However, notwithstanding these positive developments there is still a significant need for change in order to realise the full potential for the development of a capital based infrastructure and to facilitate the effective functioning of enterprises, small and large.

This presentation will:

1. Identify a number of common features which characterize commercial property in central and eastern Europe.

2. Demonstrate by reference to the English legal system, how secure land titles are the basis of all real property transactions and how, in principle, that system could with appropriate adaptation, be compatible with the needs of the emerging market economies of central and eastern Europe.

3. Suggest a number of basic legal changes which are necessary in order to secure a greater capital inflow into the economies of central and eastern Europe.

Common features

The emerging market economies of central and eastern Europe share a number of common features which impact on the role played by real estate. They include:

1. The need for *capital*. It is increasingly evident that the commercial privatization programmes are *alone* insufficient to generate the levels of capital required in order to finance major infrastructure development and general economic growth. Capital inadequacy results

in increased unemployment, lack of investment in essential goods and materials, insufficient levels of business start-up and, ultimately, social disharmony.

The correct legislative framework could introduce a mechanism that would create a fully functioning financial services sector able to satisfy the needs of an emerging market economy. Financial service companies and institutions can only invest and make advances against property if the correct legal conditions exist. By establishing well-structured rights or *interests* in commercial real estate, investors are encouraged to invest and lenders to lend. Of great significance is the "trickle down" effect that such investment and loans have on the lives of the ordinary citizen. Citizens are more able to appreciate the benefits of market reforms and political change in ways which are personal and tangible - employment is created, new businesses can be founded and the social morale of the populace as a whole is thereby enhanced.

Some figures from the United Kingdom serve to illustrate the importance of property for financial services. At the end of 1990, 13.8 per cent of insurance company investments were in United Kingdom land and property and a further 1.6 per cent of their investments were in the form of home mortgage loans. Pension funds at that time had 8.2 per cent of their assets in the form of United Kingdom land and property. Bank lending to property companies in August 1992 amounted to 23 per cent of the amount of outstanding loans to industrial and commercial companies, and home mortgage loans were 68.6 per cent of outstanding loans to the personal sector. The direct exposure of banks to property loans amounted to 32.5 per cent of outstanding loans (Financial Statistics December 1992).

Property normally represents the major asset in the balance sheets of commercial and industrial companies. For example, in 1987 land and property assets accounted for 44 per cent of these companies' tangible fixed assets compared with 36.2 per cent being in the form of factories and machinery. For financial companies and institutions, land and property amounted to 85.1 per cent of their tangible fixed assets.

Property assets are widely used by companies to raise additional capital to fund investment in factories and machinery, stock and debtors. However, in central and eastern Europe today we see that small entrepreneurs, and commercial and industrial companies are being denied the opportunity of using their property assets to raise additional funds to increase productivity through investment in factories machinery. Interest rates charged by local banks are frequently prohibitive.

2. A perceived concern for central and east European governments is to avoid giving the impression of having irretrievably sold off the "crown jewels" - the land which represents their inheritance and that of their forefathers - to foreigners. Thus, there are numerous restrictions on the acquisition and disposal of property by foreigners.

3. The reform of property law has been piecemeal. As a general rule, there is an absence of comprehensive real estate laws drawn in such a way as to encourage long-term investment.

The English experience and its application to central and eastern Europe

In theory, in England and Wales, land belongs to the Crown. The only person capable of owing land is the Monarch. This idea dates from the Norman Conquest and persists today. Thus it is that the Crown allows the individual business to use its land, either to live on it or to use if for business purposes. The individual or corporate *subject* has, in relation to a given piece of land, rights and obligations - these we refer to as an "Estate in the land". A person does not own the land itself, but an "Estate in the land". This distinction, theoretical as it may in practice be, has enabled proprietary rights to be moulded with a level of flexibility which has been of great value to the development of a market economy. These legal rights are seen as substantially more than purely contractual rights. In addition, as a general rule, there are no restrictions in English land law that prevent foreign persons from acquiring English real property.

Legislation enacted in the early part of the twentieth century reflected a desire to render the sale of land and an "Estate in the land" as rapid and simple a matter as the sale of goods or of shares.

Land is distinct. It is permanent and vital to the needs of society. It is a subject matter in which rights may be granted to persons *other* than the ostensible owner. "Estates in the land" vary in size according to the time for which they are to endure. Thus, there are *estates* of *freehold* and *estates* less than freehold which include leasehold *estates* or interests. A freehold interest is potentially of infinite duration, capable of being passed to heirs. In contrast, a *leasehold* interest, whilst not having the same capacity of infinite duration, still confers on the tenant a right of ownership, albeit limited in duration by reference to the number of years for which it was originally created or granted. The landlord confers on the tenant the right to the exclusive possession of certain land or property for a period that is definite or can be defined. The landlord retains an interest which is called a reversion.

The English Common Law has been supplemented by a variety of statutes specifically designed to address commercial (as distinct from residential) leasehold premises. The aim of such legislation has been to develop a framework within which the leasehold interest is a vital mechanism for the creation of a varied and prosperous market economy.

According to English law, property *itself* cannot be owned. It is an *interest in land* which is owned. Within interests in the land (or property) it is possible for there to be *many* different interests in the same piece of property, each interest owned by a different person. To the hierarchy of interests, freehold, leasehold and sub-leasehold, the market ascribes different *values*. These *values* in turn determine the attractiveness or otherwise of the interest for the purpose of *commercial lending* by banks, building societies and other loan agencies. The presence of a multiplicity of heterogeneous interests in land, often funded by commercial mortgages, permits the rapid growth of the economy.

Thus, a freeholder may not wish to use a property himself, but may purchase it as an investment. He may decide to split it into several parts physically and to let the various parts to different tenants. Each tenant will own an *interest* in the property. In time, one of the tenants may decide that he no longer wishes to use the property and, providing the terms of his lease permit such an action, may sub-let part or all of the property which he leases. In such a case, there will be three *interests* in that property, i.e. a freehold *interest*, a leasehold *interest* and a sub-lease *interest*. If the freeholder has purchased the property with the aid of a mortgage, the mortgagee would also have an *interest* in it. It is not unusual to find that the *interests* in even relatively small properties are numerous.

In a leasehold context, the value of the lease *interest* will, in addition to market factors, turn on the manner in which the lease itself has been written. It is not unusual to find English commercial leases being drawn for up to twenty-five years. In deciding whether to grant a loan, a bank would need to be satisfied that the *income* deriving from the building would be sufficient to enable the borrower to repay capital and interest on the loan over a defined period. A bank would also wish to be satisfied that there was a *"market"* for the building of the type to be mortgaged, since this would undoubtedly affect the extent to which (a) the *capital value* of the building might appreciate over time and (b) in the event of the borrower being in default of its loan obligations, the ease with which the bank could find a willing purchaser for the land and the building, the proceeds of sale from which much necessarily be sufficient to repay the lender all monies due. Were the borrower to default on the repayment of capital and interest, the bank would wish to be assured that were it to repossess the land and building, that not only would it be entitled to receive a satisfactory income stream from the existing tenant, but that the capital value of the land and building itself would have shown growth since the date of the original loan. It is against this rationale that the *value* of a lease *interest* and, in turn, the freehold *interest* is crucially affected by the *form* of the lease itself and the legal context within which its terms are to be interpreted.

Legislation can substantially affect the *value* of commercial property. A statute that changes the relationship of commercial landlord and tenant, will have a direct impact on property value. The overriding intention of such legislation ought to be to establish a commercial balance between the respective interests of landlord and tenant in a given property. Well-drawn legislation should introduce substantial certainty of knowledge whereby both landlord and tenant clearly know where they stand and are able *to plan* for their respective future business strategies.

Of fundamental importance is the willingness of lenders to regard property, more specifically, *interests* in property, as being satisfactory for the purposes of mortgage security. Statute can provide, as in England, for lenders to be provided with a number of remedies in the event of a borrower failing to make repayment. English commercial leases invariably contain an express provision permitting a landlord to take appropriate action in the event that a tenant fails to comply with its obligations. A landlord may be able to terminate the lease, to appoint a receiver or to look to a guarantor for compensation. Remedies available to lenders

should be flexible, capable of being easily understood and readily enforceable by a judiciary and administrative process conversant with and trained in the issues.

The need for legal change in central and eastern Europe

Notwithstanding the positive developments of recent years, there is still a significant need for property law reform throughout central and eastern Europe.

In relation to Landlord and Tenant Law, conceived as they were within the framework of a central socialist plan, the legal systems concerning the commercial lease of premises were reasonably satisfactory. They resulted in the controlled use of properties - properties almost exclusively owned by the State and in respect to which there was limited scope for turnover or for alternative uses. These restrictions are incompatible with the needs of a modern market economy and now form a serious obstacle to establishing one.

It is presently almost impossible to identify with certainty the true values of commercial leaseholds. Thus, one is often precluded from using such instruments as a base for commercial relations.

The following *basic* changes, particularly in the area of Landlord and Tenant Law, are desirable:

1. The *abolition* of restrictive legal and administrative controls over the ownership and transfer of leases and lease rights. In certain cases, current excessive administrative control results in unpredictability as to the fee which the administration may charge in consideration of granting its consent to a lease transfer. This in turn impedes the free movement of commercial property in the market place. Restrictions on the ownership and leasing of property by, and to, foreigners represents a significant impediment to the free movement of capital, to increased investment and to the generation of employment. As seen in the English system, it is perfectly possible to create a legal structure which permits domestic or foreign legal persons, to own valuable legal interests in land and buildings without governments being seen to have permanently divested themselves and their peoples of residual ownership of such properties. Such a system represents a useful compromise, reflecting well the needs of politicians and of the market place.

2. There is a need for commercial lease rights to be entirely independent and perceived as *estates* or *interests* in their own right capable of flexible use and having their own identifiable market value. Thus, values in the case of leasehold property should be ascertainable in the same way as those having outright ownership of the property.

   Revision and certainty of the type referred to above would enable the use of such estates or interests as security for bank loans and permit the due performance of contractual obligations to third parties. This would result in a more fluid market where it would be more possible to commence and sustain businesses and to create employment at all levels.

3. There is the need to distinguish more clearly in law between *types* of leases. Presently, there is a general failure to distinguish between, and thereby identify the peculiar needs of, (a) those engaged in agriculture, (b) those concerned with residential premises and (c) those concerned with commercial premises, i.e. office, retail and industrial.

4. All commercial leases ought to be capable of being registered in an appropriate land registry thereby protecting the interests of both the tenant and all third parties concerned with the value of the *estate* or *interest*. This would serve to identify leasehold *estates* as legal interests in their own right (as distinct from purely contractual): interests which would be clearly identifiable and open to inspection. In case of disputes, this would greatly accelerate the determination of claims and demands in respect to leasehold interests. The consequential clarity and the ready availability of legal redress would greatly enhance the confidence of investors, both domestic and foreign.

5. The purpose of the law should be to establish a balance between the respective interests of landlord and tenant. Subsequent negotiations may well affect that balance, but these would be market driven.

A well-drawn lease should identify the basis on which rent is to be paid and whether such rent is reviewable and, if so, according to which review pattern. This is fundamental in establishing the relative values of landlord and tenant. A coherent body of law specifically addressing the needs of the commercial sector would look to create the framework whereby at the inception of the lease, there is a mechanism for establishing such values and whereby external (non-contractual) causes for change or interference are reserved only for exceptional circumstances. There should be restricted scope for interference by laws requiring that rents be specified or paid in the local currency.

6. Business certainty is created by a relatively free and unrestricted right to transmit and use the lease. The tenant should be given relatively undisturbed use of the premises during the period of the lease.

7. It is important that a tenant be given sufficient flexibility within the body of the lease to carry on his business. Conversely, it is important that the reversionary *interest* of the landlord be reasonably protected. Thus, powers to dispose of properties to third parties and rights as to flexible use must be supported by law.

The main purpose for this reform should be the establishment of well-structured rights or *interests* in commercial real estate so that all parties affected are able to predict with certainty their respective future values.

Conclusion

The growth in businesses of all sizes is severely inhibited without a coherent system of law reflecting the diverse and often competing interests of landlord, tenant and lender. I would argue that a legal framework be established in the region which reflects:

1. The desirability of creating a multitude of *interests* in a single property, each of which would have an autonomous legal existence and *value* capable of being funded by the national and international banking communities.

2. The need to provide lenders and those providing financial services with a simple and easily understood procedure whereby they can repossess and go against property in support of a claim for the repayment of a debt due from a borrower.

3. The need to provide landlords with the right to terminate a lease and recover vacant possession in a cost-effective and uncomplicated manner in circumstances where a tenant is held by the court (which itself understands the issues) to be in irremediable default of its lease obligations.

4. The need to introduce certainty into the relationship of landlord and tenant by clearly defining the right to remain in occupation, to own a new lease, to receive compensation and to use the lease as a valuable security in support of borrowing. Both landlords and tenants need assurance on these points in order to have sufficient confidence to invest.

5. The need to convince a commercial landlord and, in turn, investors and funding agencies which may have provided financial assistance to the landlord, that vacant possession can be readily obtained on the expiration of the contractual term of the lease in specified circumstances and provided stipulated procedures are observed.

6. The desirability, through the introduction of the concept of the *estate (or interest)* in the land (or property) or the ultimate, residual, ownership in the land (theoretical as it may be) remaining with the indigenous peoples, in a way which is entirely compatible with the development of a modern, western style, market economy.

Mr. Peter Welburn is the Senior Commercial Property Partner with the city of London law practice, Holman Fenwick & Willan. Since 1990 he has been actively engaged on numerous property transactions throughout central and eastern Europe, particularly in Hungary. He is also Secretary to the British Hungarian Law Association.

III. STATISTICAL INFORMATION

1. General developments

During the first half of 1994, the total number of foreign investment (FI) enterprises in the former CMEA area rose from 98.2 thousand in January (revised estimate) to 111.3 thousand at the end of June, while at the beginning of 1993 it stood at 68.9 thousand (see Chart 1).

In *Hungary*, during the first two quarters of 1994 over two thousand new foreign investment enterprises (FIEs) were established, and their total number reached 17,278 by the end of June as compared with 15,205 in January. It should be noted that the latter figure is preliminary (not taking into account a number of small FIEs) and is likely to be revised upwards (at the beginning of 1993 there were 17,182 enterprises with foreign participation reporting to the Hungarian Statistical Office).

The revised data for *Romania* show that the number of registered FIEs increased from 19,509 at the beginning of 1993, to 28,351 one year later and to 30,441 at the end of the second quarter of 1994. This amounts to a 56 per cent increase over the eighteen-month period.

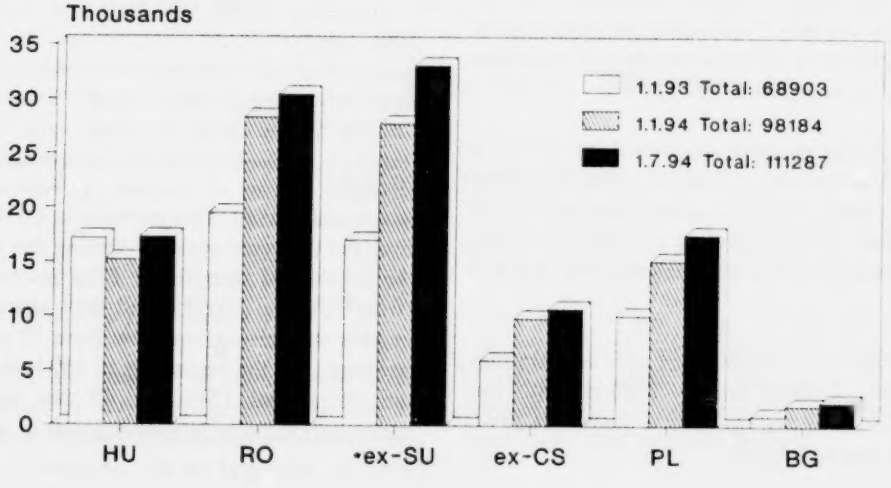
At the end of June 1994, the number of registered FIEs in *Poland* stood at 17,577, as compared with 15,167 and 10,131 two and six quarters earlier, respectively.

While no official data on the number of FIEs in the *Czech Republic* are available, the National Bank estimates their total at about 5,500 at the beginning of 1994 (3,120 a year earlier). The secretariat estimates that by the end of June 1994 the number of such companies had risen to about 6,100.

In the *Slovak Republic*, the estimated number of FIEs increased from 4,350 in January to 4,600 in June 1994, while at the beginning of 1993 they totalled 2,875.

The newly released official data show that the number of enterprises with foreign participation in *Bulgaria* increased from 896 in January 1993 to 1,852 twelve months later. At the end of the second quarter of 1994 this figure stood at 2,185 - a 2.4 fold increase over the eighteen-month period.

CHART 1
ECE ECONOMIES IN TRANSITION
Growth of Foreign Investment



Number of FIEs

•ex-SU data include those for Baltic States and CIS States

The estimated number of joint ventures and wholly foreign-owned subsidiaries established in the *former constituent Republics of the Soviet Union* numbered about 27.8 thousand at the beginning of 1994 as compared with 17.0 thousand at the start of 1993 (both estimates are revised). At the end of June of 1994, the total number of FIEs domiciled in this area is estimated at about 33.1 thousand.

During 1994, the total number of FIEs registered in the *CIS member states* more than doubled (from 8 thousand to 16.2 thousand). At the end of the second quarter of 1994 this increased to an estimated 19.6 thousand. The Commonwealth of Independent States initially included 11 former Soviet Republics: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. In January 1994, Georgia joined the CIS; however, no information on foreign investment in that country is yet available.

In the *Russian Federation*, the number of registered FIEs more than tripled over the six-quarter period ending in June 1994 (from 3,252 to 10,587). Since January 1994, when their number was 7,999, more than 2.5 thousand new FIEs were registered. The number of foreign investment registrations in *Ukraine* stood at 4,656 at the beginning of 1994, as compared with 2,000 a year earlier. During the first six months of 1994 this number is estimated by the secretariat to have grown to about 5,300.

In *Belarus*, growth in the number of FIEs was slower. During 1993 this figure increased from 716 to 1,131. The secretariat estimates that at the end of the second quarter of 1994 the number of registered FIEs totalled about 1,300.

Number of registrations continued to grow in *Estonia*, and, at the end of June of 1994, numbered 8,070. This latter figure compares favourably with its counterparts at the beginning of 1994 and 1993, when the number of FIEs stood respectively at 6,873 and 4,294.

In *Lithuania* the number of FI registrations increased from 2,089 in January 1993 to 3,485 one year later. At the end of the second quarter of 1994, this number reached 3,936.

While the data on registered FIEs in *Latvia* are not available, at the end of the second quarter of 1994 the number of operational FIEs stood at about 1,500, as compared with 1,245 in January 1994 and an estimated 800 one year earlier. It should be noted that the number of registrations exceeds that of operational enterprises roughly by a factor of 2.

In *Slovenia*, the National Bank has started compiling a new series of data pertaining to operational FIEs as opposed to registered FIEs. According to this source, at the beginning of 1994 the number of operational FIEs amounted to 1,271 and by the end of June had risen to an estimated 1,500.

Finally, the data from the national Institute of Statistics indicate that in *Albania* at the beginning of 1994, 149 FIEs enterprises were registered; one year before their number amounted to 86.

2. Foreign Investment in the Commonwealth of Independent States

The scope of the present overview is limited by the data available from the CIS Statistical Committee. These almost exclusively refer to numbers of registered FIEs domiciled on the territory of its member States and some of their operational indicators. At the same time, the data on the volume of foreign capital invested, its breakdown by foreign partner country and by industry are not available.

(a) Growth of FI registrations

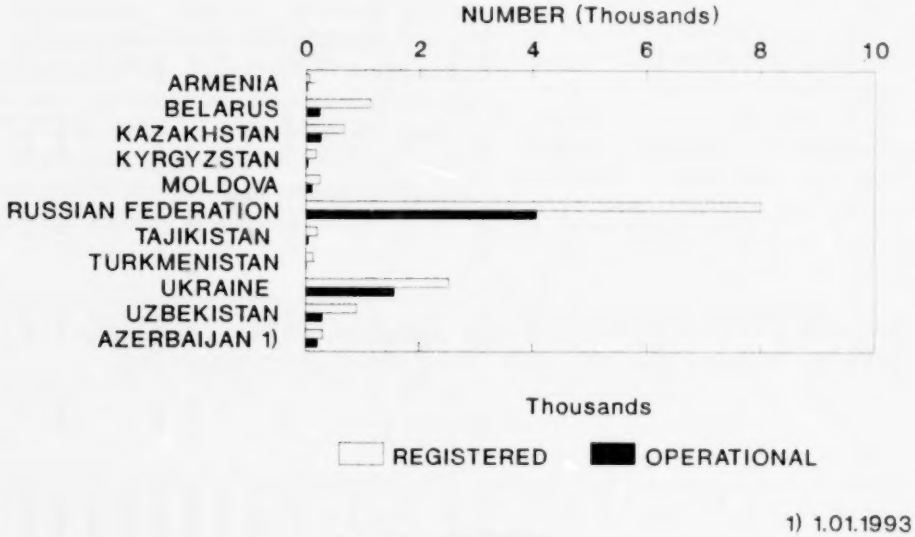
According to the CIS Statistical Committee, the total *number of FI registrations* in the member countries of this organization increased from 2,593 at the beginning of 1992 to 8,007 a year later and to 14,030 at the start of 1994 (see Chart 2 and Table 1). [According to the recently corrected data from the Ukrainian Ministry of Statistics, a more accurate figure should read 16,156.] This amounts to a 5.4-fold growth over the two year period. During the same period, the number of operational FIEs increased 5.7-fold (from 1,864 to 10,595) and their share in the total number of registrations grew from 72 per cent to 75 per cent. At the beginning of 1994, 62 per cent of the operational FIEs (or 47 per cent of those registered) actually produced goods or services. [The

CIS Statistical Committee considers operational those FIEs which produce goods or services, or have employees on their payrolls. The former are reported as a subset of the total number of operational FIEs.]

No official data on the *capitalization* of FIEs in the CIS in US$ terms are available. The secretariat estimates, however, that the foreign component of statutory capitals of these enterprises (committed foreign investment) increased from US$ 5.3 million at the beginning of 1993 to about US$ 6.3 billion a year later.

In January 1994, about 57 per cent of the total number of FI registrations was accounted for by the Russian Federation. This share duplicates its counterpart in 1991, while in 1992 it dropped to 41 per cent. This fluctuation in the Russian share implies a slowing growth of registrations in that republic in 1992 as compared with the other successor-states of the USSR; in 1993 this growth resumed at a higher-than-average rate. In reverse motion, Ukraine's share in 1993 dropped to 18 per cent, while in the previous year it stood at 25 per cent (10 per cent at the end of 1991). During 1993, all the other CIS member States, with the exception of Kyrgyzstan whose proportion increased slightly, either maintained their shares in the total number of FI registrations or saw them decline. At the end of 1993, the Russian Federation, Ukraine, Belarus, Uzbekistan and Kazakhstan accounted together for 94 per cent of the FIEs registered.

CHART 2
FOREIGN INVESTMENT ENTERPRISES IN THE CIS BY MEMBER STATE



1) 1.01.1993

As of 1.01.1993

(b) Operational indicators

In terms of *the number of operational FIEs producing goods or services*, the predominance of Russia as a host country is manifest even more than in terms of registrations. At the beginning of 1994, the Russian Federation's share amounted to about 62 per cent as compared with 59 per cent and 71 per cent one and two years before. Simultaneously, the number of producing FIEs increased most rapidly in Ukraine, whose share grew steadily during the period under review. While at the beginning of 1992 this stood at 15 per cent, two years later it made up more than 23 per cent. On a smaller scale, this observation is also valid for Kazakhstan and Uzbekistan, while the growth in the number of operational FIEs was slower than average in Belarus and most other member States.

By the end of 1993, total *employment* at FIEs had reached 446.7 thousand, growing from 282 thousand and 183.6 thousand at the beginning of 1993 and 1992, respectively (a 2.4-fold growth over these two years). In 1993, the number of wage and salary earners of CIS-based companies with foreign capital was equivalent to 0.35 per cent of the total

TABLE I

FOREIGN INVESTMENT ENTERPRISES IN THE COMMONWEALTH OF INDEPENDANT STATES, MAJOR INDICATORS

COUNTRY	REGISTRATIONS OF FIEs			OPERATIONAL FIEs			OPERATIONAL FIES WITH OUTPUT			EMPLOYMENT			OUTPUT		
	NUMBER												mn SUR		
	1991 1)	1992 1)	1993 1)	1991 1)	1992 1)	1993 1)	1991 1)	1992 1)	1993 1)	1991	1992	1993	1991	1992	1993
ARMENIA	15	120	56	...	21	30	9	19	22	963.0	1054.0	997.0	28.9	148.3	539.3
AZERBAIJAN	90	300	...	...	201	...	14	201	...	743.0	1700.0	...	58.5	360.0	...
BELARUS	283	716	1131	...	201	344	93	164	240	9900.0	14400.0	17500.0	712.6	14000.0	66700.0
KAZAKHSTAN	164	540	669	...	137	669	22	107	260	3714.0	6500.0	12600.0	195.0	16300.0	76600.0
KYRGYZSTAN	9	67	176	...	19	39	6	14	27	285.0	1424.0	2739.0	8.0	381.6	10044.7
MOLDOVA	54	172	252	...	102	116	32	78	101	3865.0	6132.0	5411.0	78.0	2506.0	9288.0
RUSSIAN FEDERATION	1487	3252	7999	...	2533	6359	1168	1987	4072	137000.0	195000.0	304200.0	18400.0	448900.0	4912000.0
TAJIKISTAN	3	200	196	...	45	58	-	19	43	-	1650.0	2059.0	-	453.9	5935.1
TURKMENISTAN	11	70	126	...	23	75	-	23	9	-	440.0	1592.0	-	200.0	122500.0
UKRAINE	267	2000	2530	...	811	2530	250	649	1549	21916.0	44600.0	83000.0	1730.7	19100.0	293000.0
UZBEKISTAN	210	570	895	...	135	375	51	101	288	5200.0	9100.0	16600.0	446.0	7700.0	112600.0
TOTAL	2593	8007	14030	1864	4228	10595	1645	3362	6611	183586.0	282000	446698	21657.7	510000.0	5609207

COUNTRY	DOMESTIC SALES						EXPORTS			IMPORTS			FOREIGN TRADE BALANCE		
	mn SUR			mn USD 2)			mn USD 2)								
	1991	1992	1993	1991	1992	1993	1991	1992	1993	1991	1992	1993	1991	1992	1993
ARMENIA	17.0	72.1	544.3	-	-	7.1	1.0	-	-	1.0	2.9	-	0.0	-2.9	-
AZERBAIJAN	8.0	273.7	...	-	-	...	16.0	31.4	39.5	0.4	35.9	22.4	15.6	-4.5	17.1
BELARUS	604.0	13600.0	46200.0	23.0	15.4	23.2	18.0	24.7	32.4	53.0	45.3	56.1	-35.0	-20.6	-23.7
KAZAKHSTAN	167.0	5900.0	48800.0	1.0	0.2	3.7	21.0	35.5	164.2	50.0	96.5	82.6	-29.0	-61.0	81.6
KYRGYZSTAN	16.0	48.9	7118.6	-	-	-	1.0	0.9	8.1	1.0	1.4	2.4	0.0	-0.5	5.7
MOLDOVA	70.0	2400.0	14900.0	5.0	1.7	2.0	5.0	32.6	5.7	5.0	13.1	10.7	0.0	19.5	-5.0
RUSSIAN FEDERATION	11278.0	169900.0	2498300.0	986.0	1364.6	1167.1	1265.0	1863.2	3121.9	1409.0	2036.9	2171.6	-144.0	-173.7	950.3
TAJIKISTAN	-	988.2	5028.3	-	-	-	-	11.8	17.7	-	10.9	4.9	-	0.9	12.8
TURKMENISTAN	-	200.0	22600.0	-	-	-	-	0.1	0.5	-	0.3	8.3	-	-0.2	-7.8
UKRAINE	1615.0	17200.0	360900.0	78.0	39.8	167.6	89.0	105.2	310.4	156.0	199.9	394.5	-67.0	-94.7	-84.1
UZBEKISTAN	413.0	4300.0	109600.0	3.0	26.2	3.9	49.0	34.8	23.0	26.0	47.5	36.9	23.0	-12.7	-13.9
TOTAL	14198.0	215321.0	3113991.2	1096.0	1448.2	1374.6	1465.0	2140.2	3723.3	1701.0	2490.6	2790.4	-236.0	-350.4	933.0

1) END OF YEAR; 2) DATA FOR 1991 ARE GIVEN IN VALUTA SUR.

NOTE: SOME FIGURES PROVIDED BY THE CIS STATISTICAL COMMITTEE DO NOT AGREE WITH THOSE PROVIDED BY NATIONAL STATISTICAL OFFICES.

FIGURES MAY NOT ADD TO TOTALS BECAUSE OF ROUNDING.

SOURCE: UN/ECE SECRETARIAT - CIS STATISTICAL COMMITTEE. STATISTICHESKII BYULLETEN' (STATISTICAL BULLETIN), JUNE 1992, No. 6, p. 48, 50;

...MAY 1993, No. 10, p. 6, 117-120.

employment in the CIS (0.2 per cent in 1992). The growth of the FIEs' share in employment in 1992-1993 was a mixed result of an increase in the number of FIEs' employees, and the overall contraction of employment (according to preliminary CIS Statistical Committee estimates the latter dropped by 2 per cent over 1993).

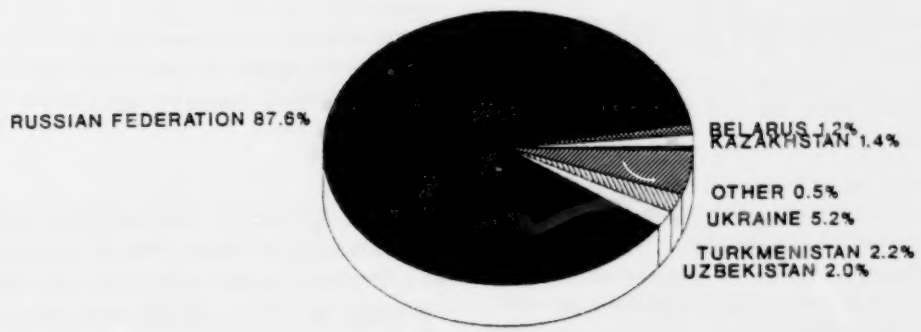
At current prices, during 1992 and 1993 the average monthly *wages and salaries* in FI-related sectors increased 10-fold per year and reached R 72.6 thousand in 1993. While in 1992 the average pay at FIEs was 20 per cent higher than its counterpart at a CIS enterprise, no direct comparisons for 1993 are possible because of the transition of most CIS countries to accounting in national currencies.

The *output* of operational FIEs domiciled in the CIS countries increased from R 21.7 billion in 1991 to R 510 billion a year later (over 23 times on a year-to-year basis) and to R 5,609.3 billion in 1993 (an 11-fold increase). That year, almost 88 per cent of the total FI-related output was accounted for by the Russian Federation, 5 per cent by Ukraine and 2 per cent each by Uzbekistan and Turkmenistan (see Chart 3). The shares of Kazakhstan and Belarus were both less than 2 per cent, while FIEs domiciled in the other CIS member States produced together about one half per cent of the total.

It should be noted that during 1991-1993 most of FI-related output growth was inflationary in all member States. At the same time, some FIEs' output growth seems to have occurred also in real terms. Estimated GDP of the Commonwealth, also at current prices, grew 13-fold in 1992 and 9-fold in 1993 (and dropped in real terms by 18 per cent and 11.5 per cent respectively on a yearly basis). [CIS Statistical Committee. *Natsional'nye scheta i ekonomicheskiye balansy stran-chlenov Sodruzhestva Nezavisimykh Gosudarstv za 1990-1993 gody* (National Accounts and Economic Balances of the Commonwealth of Independent States member-countries in 1990-1993). 1994, p. 9 and 10.] Due to a steeper current price increase of FIEs' output, its ratio to the Commonwealth GDP rose from 1.1 per cent in 1991 to 2 per cent in 1992 and 2.5 per cent in 1993. That year, the Russian Federation had the highest FIEs' output/GDP ratio (3 per cent) while in most other member States this was lower than average.

According to the CIS Statistical Committee, in 1992 FIEs' *industrial output* accounted for 2 per cent of the CIS industrial production on average, with 2.8 per cent in the Russian Federation,[This percentage is significantly higher than that calculated from the national data (1.9 per cent).] 1.6 per cent in Uzbekistan, 1.3 per cent in Kazakhstan and Moldova, 1.2 per cent in Belarus and less than 1 per cent in Armenia, Kyrgyzstan, Tajikistan and Turkmenistan.

CHART 3
OUTPUT BY FOREIGN INVESTMENT ENTERPRISES ENTERPRISES IN THE CIS BY MEMBER STATE



1993

During 1993, operational FIEs domiciled in the CIS *marketed* goods and services worth R 3,114.0 billion. Over the period under review, their domestic rouble sales increased about 15-fold both in 1992 and 1993 on a year-to-year basis. In none of the Commonwealth countries (except in Ukraine in 1993) were inflation rates significantly higher than those indicated. This suggests a real growth of FIEs' domestic sales in national currencies.

In 1993, of the total domestic rouble sales, Russia-based FIEs accounted for 80 per cent, those domiciled in Ukraine for 12 per cent and those in Uzbekistan for 3.5 per cent (95 per cent taken together). While the Russian share in sales remained stable during 1991-1993, those of Ukraine and Uzbekistan tended to grow (during 1993), while those of Belarus and, to a lesser extent, Kazakhstan dropped.

On top of their rouble sales, in 1993 companies with foreign capital share marketed domestically goods and services worth US$ 1,374.6 million. While this figure is lower than its counterpart for 1992 (US$ 1,448.2 million) because of a decrease in sales volume in the Russian Federation, in other CIS member countries (Ukraine and Belarus) the US$ sales value increased. Despite a drop in its share in 1993, as much as 85 per cent of FIEs' domestic sales in US$ were effected in the Russian Federation (94 per cent in 1992). While the Ukraine's share made up 12 per cent, those of other member States did not exceed 2 per cent.

(c) FIEs' foreign trade

During 1991-1993, the value of FI-related *exports* (which exclude the intra-CIS transactions) grew almost 5-fold and amounted to US$ 3.7 billion in 1993. At the same time, overall extra-CIS exports of the Commonwealth stagnated. At current prices, they increased by 12 per cent in 1992 and than tumbled by 3 per cent the next year. As a result, over 1991-1993, FIEs' share of overall exports grew from 1.8 per cent in 1991 to 8.2 per cent in 1993.

The growth rate of FI-related *imports* was slower. During 1991-1993, their value less than tripled, and in 1993 the growth slackened. Over the same period, extra-CIS imports of member States were falling in absolute terms. As compared with 1991, their value decreased by about 2 per cent in 1992 and plummeted by 28 per cent in 1993. Consequently, the share of FIEs in the total value of extra-CIS imports increased from 2.1 per cent in 1991 to 8.5 per cent in 1993.

One sees that in 1993, at least, the FIEs' share in the extra-CIS foreign trade of member countries was higher than their share in some other macro-economic aggregates (output/GDP ratio, employment). This attests to a higher degree of their involvement in foreign economic relations as compared with other enterprises.

The *trade balance* of the CIS-based FIEs was negative in 1991 and 1992, while for the grouping as a whole it was positive and increased in absolute terms. The deficits in FI-related trade were equivalent to 11 per cent and 4 per cent of the overall positive balances in these respective years. In 1993, however, the foreign trade balance of FIEs also became positive amounting to about 8 per cent of the total positive foreign trade balance of the CIS states. The levelling out of FI-related exports and imports occurred due to a steeper growth rate of exports as compared to that of imports.

The data on FIEs' *foreign trade by direction*, available only for 1991 and 1992, show that in 1992 Finland and Germany, each accounting for about 15 per cent of the total foreign trade turnover of FIEs, were the largest trading partners of the CIS-based companies with foreign capital participation (see Table 2). These were followed by Japan (9 per cent), the United States (6 per cent) and Italy (4.5 per cent). Together the five above-mentioned countries accounted for 50 per cent of the total foreign trade turnover of these enterprises, while the first ten major partner countries accounted for two-thirds of it. The indicated percentages were practically identical to those of 1991, although in terms of country ranking, Germany (20 per cent of turnover), Japan (15 per cent), ex-CSFR (6 per cent), Poland (5 per cent) and Finland (5 per cent) were at the top.

Thus, the limited data available testify of the concentration of foreign trade of the CIS-based FIEs on developed market economies - principal actors in international trade. At the same time, the role of European transition economies as important markets and sources of procurement can not be discounted.

TABLE 2

FOREIGN INVESTMENT ENTERPRISES IN THE CIS, FOREIGN TRADE BY PARTNER COUNTRY

(mn USD)

COUNTRY/REGION	EXPORTS		IMPORTS	
	1991	1992	1991	1992
Western Europe	366.7	926.8	514.9	1381.8
EU	277.6	662.5	402.7	695.8
Belgium	14.1	64.8	7.8	5.5
Denmark	3.8	9.6	55.6	2.5
Greece	13.4	5.4	0.2	11.8
France	11.9	44.7	30.3	20.7
Germany	133.6	226.8	233.6	468.8
Italy	36.6	126.8	27.9	79.3
Netherlands	35.3	89.3	23.9	63.5
Spain	5.1	29.6	3.8	3.0
United Kingdom	23.8	65.5	19.6	40.7
EFTA	84.6	197.3	107.1	663.6
Austria	29.1	47.5	44.5	51.4
Finland	43.5	116.2	44.6	586.5
Norway	1.7	11.2	2.1	7.6
Sweden	10.3	22.4	15.9	18.1
Other Europe	4.5	67.0	5.1	22.4
Turkey	4.5	67.0	5.1	22.4
Canada	0.9	26.7	6.3	12.8
United States	15.2	123.0	50.3	150.2
Japan	205.4	295.8	66.0	138.9
Developing countries	6.9	79.7	14.2	253.0
Brazil	-	5.7	1.0	5.2
India	0.2	3.7	4.9	75.6
Iran, Islamic Republic of	0.8	23.6	0.2	46.2
Korea, Republic of	5.9	46.7	8.1	126.0
Economies in transition	144.9	274.0	131.1	282.2
Bulgaria	21.6	24.3	5.3	92.1
ex-CSFR	58.9	134.0	48.7	31.7
Hungary	27.7	77.9	20.4	20.8
Poland	36.0	29.9	56.7	120.9
Romania	0.7	7.9	-	16.7
Non-European planned economies	16.6	124.1	38.9	55.1
China	12.4	74.9	24.0	38.6
Viet Nam	4.2	49.2	14.9	16.5
Other countries	0.0	0.1	0.9	0.4
Australia	0.0	0.1	0.9	0.4
Other	83.0	290.0	156.2	216.2
Total	839.6	2140.2	976.8	2490.6

NOTE: EXCLUDING INTRA-CIS TRADE; FIGURES MAY NOT ADD TO TOTALS BECAUSE OF ROUNDING.

SOURCE: UN/ECE SECRETARIAT - CIS STATISTICAL COMMITTEE

(STATISTICHESKII BYULLETEN' (STATISTICAL BULLETIN), MAY 1993, No. 10, p. 121).

Information available on the *commodity structure* of FIEs is sketchy. According to the CIS Statistical Committee, during the first 9 months of 1993, 57 per cent of their exports consisted of mineral products (including mineral fuels), 10 per cent wood and wood products, 8 per cent metals and metal products, 6 per cent chemicals and 6 per cent agricultural and food products.

The bulk of imports (31 per cent) was accounted for by machinery and equipment, while food made up 15 per cent, and textiles, wearing apparel and footwear equalled 19 per cent of the total. [CIS Statistical Committee. Statisticheskii Byulleten', January 1994, No. 1, p. 4.] This structure - exports consisting primarily of basic commodities and fuels, and imports, of equipment, food and consumer goods - broadly corresponds to the overall foreign trade pattern of the former Soviet Union.

3. Overview of Foreign Direct Investment in Bulgaria

Although until recently the available information on foreign investment in Bulgaria has been sketchy, *East-West Investment News* has addressed this issue to the extent possible (see *East-West Investment News*, Summer 1993, No. 2). The new relevant data, available from the Foreign Investment Commission of the Bulgarian Council of Ministers, permit a more detailed analysis of this subject.

(a) Growth and capitalization

From January 1990 to the end of July 1994, the total *number* of foreign direct investment cases in Bulgaria grew from 33 to 2,185; this growth has accelerated dramatically since 1992 (see Chart 4 and Table 3). During 1992, the number of FDI cases increased 6.4 fold, and doubled in 1993. [The number of FDI cases refers to direct investments made by foreign companies in host country enterprises - recipients of foreign capital (FDI enterprises or FDIEs). Since an FDI enterprise can have more than one foreign capital participation, the number of FDI cases may exceed that of FDIEs.]

It should be noted that the number of FDI cases corresponds to the transferred (as opposed to committed) foreign capital. Between January 1990 and July 1994, the *value of FDI* grew slower than the number of investments, although in 1992 and particularly 1993 the yearly investment volumes increased. During 1993, FDI stock grew by US$ 149 million, a sum nearly three times greater than that of the previous year. Furthermore, over the first seven months of 1994, more than US$ 68 million were invested.

In addition to tracking transferred FDI, the Council of Ministers also records the cumulative investment commitments of foreign companies (contracted investments). At the beginning of August 1994, these amounted to US$ 120 million.

During 1990-1992, the amount of the *average investment* tended to decrease (from US$ 246 thousand in 1990 to 77 thousand in 1992 in cumulative terms). Subsequently, this indicator had shown signs of growth. Also in cumulative terms, the average investment increased to US$ 118 thousand in 1993 and to US$ 131 thousand at the end of July 1994.

CHART 4
GROWTH OF FOREIGN DIRECT INVESTMENT IN BULGARIA

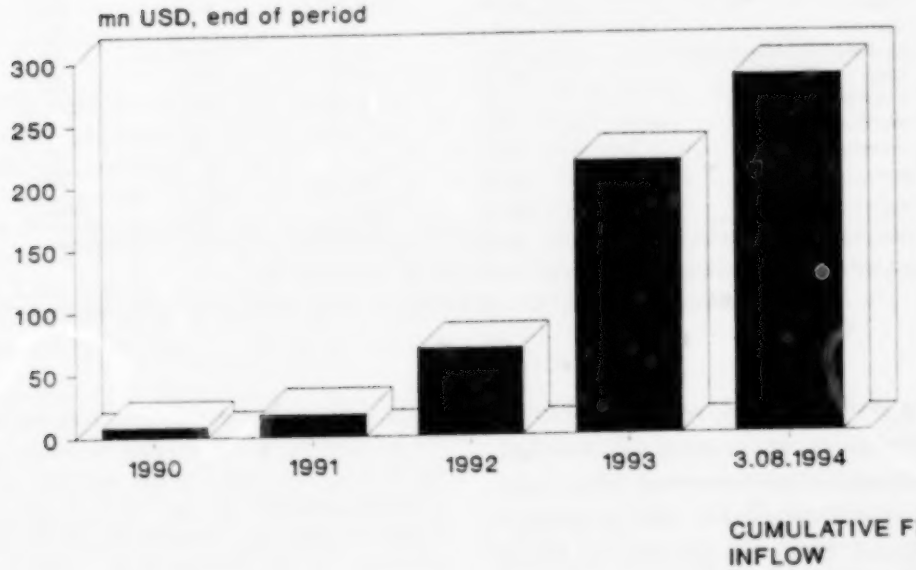


TABLE 3
FOREIGN DIRECT INVESTMENT IN BULGARIA, BY YEAR

YEAR	FDI INFLOW (mn USD)	NUMBER OF FDI CASES
1990	8.1	33
1991	9.3	108
1992	51.3	755
1993	149.2	956
1994 (1.01.-3.08)	68.4	333
TOTAL	285.4	2185

NOTE: ON 3 AUGUST 1994. FIGURES MAY NOT ADD TO TOTALS BECAUSE OF ROUNDING.

SOURCE: UN/ECE SECRETARIAT - BULGARIAN COUNCIL OF MINISTERS

On that date, despite a growth in their average size, most direct investments were small. About 65 per cent of them were less than US$ one thousand, and 87 per cent did not exceed US$ 10 thousand. This 87 per cent of investments accounted for less than one percent of the total FDI stock on the same date. On the other side of the spectrum, there were 36 FDI cases (less than two per cent of their total number) of more than US$ one million each, which aggregated to over 90 per cent of the total FDI stock. Thus, while in terms of numbers very small ventures predominated, a few larger investments represented most of the foreign capital stock.

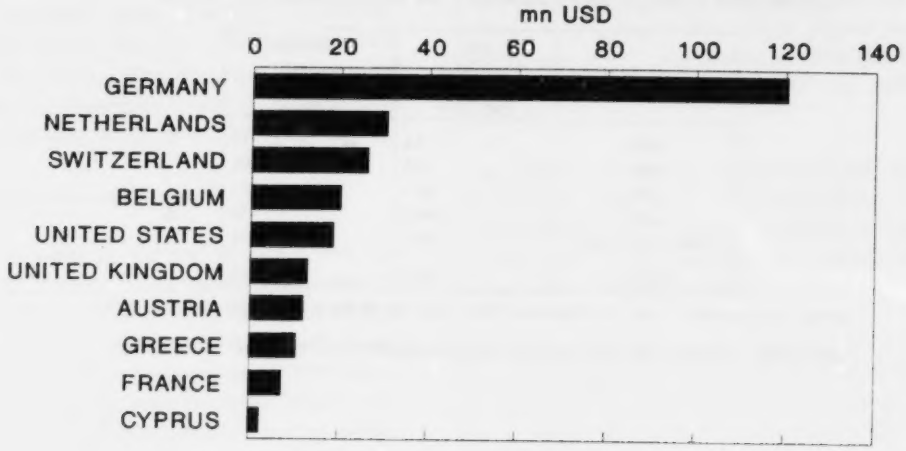
(b) Foreign partners

The data relating to the *origin* of foreign investment are available only in terms of major foreign partner countries (see Chart 5 and Table 4). This being said, these indicate that at the beginning of August 1994 west European market economies were the source of 85 per cent of total FDI stock. Of this, almost 71 per cent originated in countries of the European Union and about 15 per cent in other west European states, while the share of European transition economies was insignificant (less than half a per cent).

With regard to capital, the ranking of major partner countries shows that German companies, accounting for 42 per cent of the total FDI stock were the largest single consolidated investor. These were followed by investors from Netherlands (11 per cent), Switzerland (9 per cent), Belgium (7 per cent) and the United States (6.5 per cent). These five major investor countries taken together made up almost 76 per cent of the total FDI stock to date, while the top ten of them accounted for 91 per cent of it.

In terms of the number of FDI cases, however, the ranking was somewhat different. While about 43 per cent of them were of unspecified origin, Greece and Turkey, immediate neighbours of Bulgaria, had the largest number of investments (19 per cent and 9 per cent, respectively). In descending order, companies from the Russian Federation, Germany and Austria followed, accounting for about 42 per cent of the total number of FDI cases (while the ten major investor countries made up 54 per cent). It can be thus noted that in terms of FDI numbers, the concentration rates were lower than those of capital.

CHART 5
FOREIGN DIRECT INVESTMENT IN BULGARIA BY MAJOR FOREIGN PARTNER



CUMULATIVE FDI INFLOW

As of 3.08.1994

TABLE 4
FOREIGN DIRECT INVESTMENT IN BULGARIA, BY ORIGIN OF FOREIGN PARTNER

COUNTRY/REGION	FDI STOCK (mn USD)	NUMBER OF FDI CASES
WESTERN EUROPE	244.3	1054
EU	202.0	670
BELGIUM	20.3	37
FRANCE	7.3	30
GERMANY	120.3	96
GREECE	10.5	421
NETHERLANDS	30.6	30
UNITED KINGDOM	13.0	56
EFTA	38.4	122
AUSTRIA	12.0	75
SWITZERLAND	26.4	47
OTHER EUROPE	4.0	262
CYPRUS	2.5	62
TURKEY	1.4	200
UNITED STATES	18.7	69
TRANSITION ECONOMIES	1.1	116
RUSSIAN FEDERATION	1.1	116
OTHER	22.3	946
TOTAL	286.4	2185

NOTE: ON 3 AUGUST 1994. FIGURES MAY NOT ADD TO TOTALS BECAUSE OF ROUNDING.

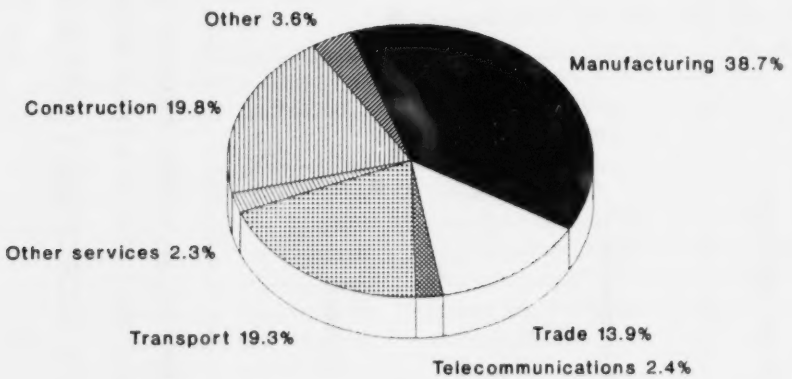
SOURCE: UN/ECE SECRETARIAT - BULGARIAN COUNCIL OF MINISTERS

(c) Industrial breakdown

At the beginning of August 1994, in terms of national industrial classification, as much as 39 per cent of total FDI stock was invested in manufacturing (electronics, petroleum refining and distribution, and other manufacturing taken together) (see Chart 6 and Table 5). Construction and transport attracted respectively 20 per cent and 19 per cent of the total volume of invested capital, while trade attracted about 14 per cent. These four sectors taken together accounted for almost 92 per cent of the total foreign investment, the shares of other sectors being generally about 2 per cent or lower.

It should be noted that in terms of the number of FDI cases, trade intermediation accounted for an overwhelming share of the total - 71 per cent, while the weight of manufacturing was less than 12 per cent, and those of construction and transport less than 2 per cent, in each case. This shows that in August of 1994 the industrial structure of foreign direct investment in Bulgaria was determined by a large number of small trading enterprises, while few companies in industry, construction and transport enjoyed substantial foreign capital participation.

CHART 6
FOREIGN DIRECT INVESTMENT IN BULGARIA BY SECTOR OF ACTIVITY



CUMULATIVE FDI INFLOW

As of 3.08.1994

TABLE 5
FOREIGN DIRECT INVESTMENT IN BULGARIA, BY INDUSTRY

INDUSTRY/SECTOR	FDI STOCK (mn USD)	NUMBER OF FDI CASES
Agriculture	0.3	19
Mining	4.3	11
Petroleum refining & distribution	11.5	11
Electronics	0.9	28
Other industry	98.5	215
Trade	39.8	1543
Construction	56.7	29
Transport	55.3	41
Telecommunications	6.9	13
Consulting services	3.7	136
Other services (incl. tourism)	6.6	32
Other	2.3	107
Total	286.4	2185

NOTE: ON 3 AUGUST 1994. NATIONAL INDUSTRIAL CLASSIFICATION.
FIGURES MAY NOT ADD TO TOTALS BECAUSE OF ROUNDING.

SOURCE: UN/ECE SECRETARIAT - BULGARIAN COUNCIL OF MINISTERS

IV. NEWS ROUND-UP

1. Carol Cosgrove appointed Director of Trade Division of the United Nations Economic Commission for Europe

Carol Cosgrove, a national of the United Kingdom, has been appointed Director of the Trade Division of the United Nations Economic Commission for Europe (UN/ECE), by the Secretary General of the United Nations, with effect from 10 October 1994.

Dr. Carol Cosgrove was educated at the London School of Economics and holds a Bachelor of Science Degree in Economics, a Masters in European Studies and a Ph.D in Trade Relations with the European Community.

Throughout her distinguished career as an academic, an official at the London Office of the European Community, a trade consultant and an entrepreneur, she has maintained her principal interest in European issues and worked in all member States of the EU, as well as Sweden, Finland, the Czech Republic, and Hungary.

Carol Cosgrove joins the UN/ECE coming from the private sector. Since 1984, she has been a Director of one of the foremost trade development consultancies,

CTA *Economic & Export Analysts Ltd*, of the United Kingdom. In that capacity she has directed a wide range of export promotion and trade facilitation projects throughout the world. Most assignments have targeted the European Union market. She is an acknowledged expert on European Union trade policies, tariffs and the hierarchy of market access regimes. She has frequently acted as a counsellor to the European Commission and advised many leading corporations on international trade issues, and is the author of more than ten books on trade and development.

Dr. Cosgrove sees her new role as Director of the ECE/Trade Division as an exciting challenge. The division, which comprises challenging new developments in the field of trade facilitation (EDIFACT), has an opportunity to contribute to the reintegration of the European economy and to strengthen the markets of all European countries within a global framework. She looks forward to developing contacts with trade professionals throughout the ECE member States.

2. Seminar on Problems Surrounding Real Property Transactions Involving Foreign and Domestic Investors in Central and Eastern Europe, Palais des Nations, Geneva, 5 September 1994

During the first day of the session of the ECE Working Party on International Contract Practices in Industry (WP.5), a seminar was held on the topic of problems surrounding real property transactions involving foreign and domestic investors in central and eastern Europe. The seminar attracted some 80 participants from 20 countries. Lawyers, bankers, businessmen, property developers, surveyors and real estate appraisers from east and west attended the seminar. Three papers presented at this seminar have been reproduced above.

Main recommendations and conclusions of the seminar

There was universal agreement that more favourable property laws were required in countries in transition in order to facilitate the privatization programme. However, there was a consensus too that it was not appropriate to propose a single prescriptive model that would be applicable for the whole region. Countries are in varying stages of development and there are wide differences in the extent to which different types of property (rural, urban, residential, commercial) have been nationalized. It was also presumptuous for people who live outside a country and who are ignorant of its culture and traditions to proffer all-embracing solutions to its problems.

Nevertheless, speakers agreed that there was a core set of principles which need to be fulfilled by each country in transition in order for a viable market in real estate transactions to develop:

1. It is essential for the participants in the process of decentralized coordination of economic decisions to have secure and alienable property rights to assets.

2. Such property rights that are partitionable, separable and alienable, should be tradeable at mutually agreed prices in reliable contractual transactions that can be freely negotiated between the parties.

3. The law should provide four essential elements: it should be transparent, reliable, predictable and workable.

4. Property rights should be capable of being enforced and protected through an independent juridical system staffed by a well-trained independent judiciary.

5. Investors must have the confidence of knowing that they can obtain good security for their loans by using land interests as collateral and can enforce that security when necessary.

A number of practical issues flowing from putting these principles into effect were discussed and recommendations made:

Title issues

The establishment of a reliable, self-financing system of land registration, which is accessible to the public, will be extremely helpful in enabling the transfer of land between separate legal entities. The United Kingdom Land Registry, to take one example, presents a useful model for countries in transition wishing to develop their land registration system.

Computerization of registered titles is a key element in the development of an efficient registration system. Computerization facilitates access to the information recorded, reduces the fees charged to the person either wishing to register the title or to have information on the property, and significantly reduces the cost of land transfer.

All countries in transition badly need technology and training to develop and operate a computerized registry system.

Difficult legal issues need to be resolved in establishing title to land ownership. In an economy where this is the case, consideration might be given to title insurance, funded perhaps by a levy on inward investors and grant aid from the various world and aid agencies that currently make funds available to central and eastern Europe to enable the emerging market economies to develop.

Lien registration and mortgage issues

There is a need for an advisory board of legal experts to be established, perhaps under the auspices of the Working Party on International Contract Practices in Industry, in order to provide assistance on this central problem facing lenders in countries in transition.

Valuation issues

It will be essential that a viable and functioning market in real estate be developed. Central to this aim is the development and training of appropriate advisers in real estate matters (e.g. valuers, surveyors) to facilitate the negotiation and transfer of title. Several problems need to be taken into account by countries in transition and western donor countries, notably the lack of resources to provide adequate training (computers, books, etc.), the importance of the cost method in valuation, the lack of good professional standards, etc.

A well-trained profession of appraisers is required in all countries in transition and governments have a role through licensing and in legitimating the use of the profession in valuation activities, in developing this profession.

Professional appraisers must be trained in market-based approaches to valuation as cost-based approaches which are at present more commonly used, do not take sufficient account of market-based phenomena.

Consideration also should be given to the development of a system of making information on land values publicly available. There are clear benefits to any market, and particularly a newly developing market, in having ready access to data concerning land transactions so that information can be of use to the parties to a proposed transaction. The establishment of such a system is currently being considered in the United Kingdom. Such data is published in the Untied States as a matter of regular practice.

Indeed, the absence of such regular and reliable price information has been blamed for some of the recent unpredictable movements in property values in western Europe.

Restitution issues

Issues related to restitution are matters for determination by each individual society and state. The problems vary from country to country, and resolution by each individual country will reflect the history and timing of confiscation in that particular country and the moral and economic parameters which concern that particular country. There was a general view that the seminar could make no general comment, other than to note - as is well known - that the continuation of uncertainty in these matters will have an adverse effect on the use of property as an essential part of an emerging market economy.

As mentioned above, a solution to these difficulties might be available though title insurance. What, however, is just as important is the need to take firm decisions on the extent of any restitution or compensation proposed, to stick to those decisions and to ensure that any claims to be made must be submitted within a fixed and relatively short period.

Environmental issues

Steps must be taken to establish future planning and environmental controls in order to limit the use of land which is harmful in physical or aesthetic terms to the community. Any right in respect of property should be exercised in such a fashion that it does not harm others in either use or environmental terms. In western economies such controls are developed considerably and are usually administered at the local level.

When economies were centrally planned, there was often no requirement to have separate planning and environmental control systems since those matters were generally dealt with as part and parcel of the central economic decision process. With the advent of an economy where decisions about production, distribution and consumption are taken on a decentralized basis, it will be most important that planning and environmental control policies are operated in a transparent, reliable, predictable and workable way in the economy in question.

The following papers were presented at the seminar as conference room papers and are available by writing or faxing the Trade Division (see details below):

No.1 "Land Registration in England and Wales" by Mr. John Manthorpe CB, The Chief Land Registrar, HM Land Registry, United Kingdom;

No.2 "Land Development Mechanisms and Emerging Land Markets in Eastern Europe" by Mr. Rodrigo Acosta, Association pour le Développement des Etudes Foncières (ADEF), France;

No.3 "The Importance of Land Title in Stimulating Property Investment" by Mr. Peter Welburn, Partner, Holman Fenwick & Willan, London, United Kingdom;

No.4 "Valuation in Eastern Europe" by Mr. John Verpeleti, Director, Real Estate Services, Price Waterhouse Corporate Finance, Budapest, Hungary;

No.5 "Property Market Formation and Urban Land Valuation in Russia" by Ms. Irina Abankina, Consulting Firm Polis-3, Moscow, Russian Federation;

No.6 "Investment in Moscow Real Estate", Mr. Sergei Melnichenko, First Deputy Chairman, Moscow Land Committee, Moscow, Russian Federation.

A full report of the seminar is also available from the secretariat.

V. INDEX OF PREVIOUS ISSUES

East-West Investment News

No. 2, Summer 1994

FOREIGN INVESTMENT

* Comparative table on foreign investment legislation.
* Romania: Proposed amendment to foreign investment law may raise minimum capital requirement for foreign investments.
* Russian Federation: Presidential Decree restricts the activity of foreign banks; Prime Minister announces plans to improve foreign investment laws.

PRIVATIZATION ISSUES

* Czech Republic: New property law intended to facilitate transfer of ownership and lower the cost of real estate.
* Hungary: New law on the ownership of arable land.
* Kazakhstan: Presidential Decree liberalizes land use and ownership regulations.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Estonia: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign investment; geographical distribution of foreign investment enterprises; operational foreign investment enterprises.

OTHER ISSUES

* Commonwealth of Independent States: New free trade agreement between member countries signed.
* Russian Federation: Presidential Decrees increase tax base and fight tax evasion.

No. 1, Spring 1994

FOREIGN INVESTMENT

* Ukraine: State programme to encourage foreign investment.
* Hungary: Recent changes in the taxation and foreign trade regimes affect foreign companies.
* Kazakhstan: New currency and foreign trade regulations.
* Russian Federation: New banking and foreign trade regulations.

PRIVATIZATION ISSUES

* Russian Federation: State privatization programme.
* Hungary: Legal aspects of the sale of Matav, the country's telecommunications operator.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Czech Republic: Growth of foreign investment; principle foreign investor countries; Industrial breakdown of foreign investment.

OTHER ISSUES

* Survey results: Availability of information needed by western businesses operating in countries in transition.

No. 4, Winter 1993

FOREIGN INVESTMENT

* Hungary: Assistance for companies with foreign investment participation.
* Russian Federation: New regulations on operations on companies and banks with foreign investment participation.
* Slovakia: Foreign investment regulations for joint ventures.

PRIVATIZATION ISSUES

* Belarus: Privatization programme and foreign investment legislation.
* Kyrgyzstan: Problems facing the economy and the role of foreign investment; legislation pertaining to foreign direct investment and privatization; registration of foreign investments; use of real property and hard currency; tax benefits for foreign investors.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Belarus: Growth and capitalization of foreign investment; principle foreign investor countries; geographical distribution of foreign investment enterprises; operational foreign investment enterprises.
* Poland: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign investment; geographical distribution of foreign investment enterprises; operational foreign investment enterprises.

No. 3, Autumn 1993

FOREIGN INVESTMENT

* Russian Federation: New companies required to register with tax authorities; sale of foreign currency earnings; restrictions on the activities of foreign banks; certification of goods exported by joint ventures.
* Slovenia: New law and regulations on foreign trade.

PRIVATIZATION ISSUES

* Belarus: New laws on the privatization of state property and privatization cheques.
* Central and eastern Europe: Franchising development.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Hungary: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign capital; geographical distribution of foreign investment enterprises; magnitude of operations and economic weight.

OTHER ISSUES

* Recent publications.
* Foreign investment agencies in the economies in transition: Names, addresses, telephone and fax numbers.

No. 2, Summer 1993

FOREIGN INVESTMENT

* Former Soviet Union, central and eastern Europe: Summary table of privatization legislation relevant to foreign investors.
* Poland: PAIZ, the State foreign investment agency.
* Russian Federation: New regulations on foreign bank operations.
* Slovak Republic: Tax holidays for foreign investors.
* Ukraine: Foreign investment and trade regulations.

PRIVATIZATION ISSUES

* Albania: Law on Commercial Companies (19 November 1992); Law on Restitution and Compensation of the Property of ex-Owners (17 April 1993); Law on the Compensation of Former Proprietors of Agricultural Lands (21 April 1993); amendments to Law No. 7512 (10 August 1991); Law on Excise Tax (9 March 1993); Law on Profit Tax (9 March 1993).
* Czech Republic: Share trading begins.
* Poland: A preliminary assessment of mass privatization law and its implications for foreign investors.
* Russian Federation, Kazakhstan, Uzbekistan: Comparison of banking legislation.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Bulgaria: Foreign investment growth.

OTHER ISSUES

* Recent publications.

No. 1, Spring 1993

FOREIGN INVESTMENT

* Commonwealth of Independent States: Selected major foreign investment projects in mineral resources.
* Bulgaria, Hungary: EFTA free trade agreements signed.
* Croatia: Investment regime and incentives for foreign investors.
* Slovak Republic: Foreign investment and monopolistic positions; competition legislation; anti-competitive behaviour involving foreign companies; new legislation under preparation.

PRIVATIZATION ISSUES

* Economies in transition: Current status of intellectual property legislation
* Czech Republic, Slovak Republic: Prospects for foreign investors under voucher privatization; privatization by the traditional route; voucher privatization and the role of the securities market; consequences of voucher privatization for foreign investors.
* Russian Federation: Law on currency regulation and foreign exchange; law on bankruptcy; law on insurance; foreign trade regulations.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Slovakia: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign investment.

OTHER ISSUES

* Recent and forthcoming publications.
* Russian Federation: Survey results of the top 15 business schools.

East-West Investment and Joint Ventures News

No. 14, December 1992

FOREIGN INVESTMENT

* Economies in transition: The role of foreign capital in defence conversion; scope of conversion problem; participation of foreign capital in conversion; under-utilized potential; list of major foreign investment projects.
* Albania: Obtaining authorization for foreign investment; rights of establishment; guarantees; repatriation of capital investments and profits.
* Belarus: Law restricting the use of foreign currency; establishing foreign enterprises; taxation regulations; foreign trade regulations.
* Uzbekistan: New law on foreign investment; taxation and incentives; use of local currency; guarantees and protection of foreign investment.

PRIVATIZATION ISSUES

* Baltic Republics: Privatization opportunities for foreign investors in Estonia, Latvia and Lithuania.

STATISTICAL INFORMATION

* General developments in selected economies in transition: Growth and capitalization of foreign investment; principle foreign investor countries; scope of operations.

OTHER ISSUES

* Recent publications.

No. 13, September 1992

FOREIGN INVESTMENT

* Former Soviet Union, central and eastern Europe: Summary table of privatization legislation relevant to foreign investors.
* Azerbaijan: Taxation and incentives; use of local currency profits; guarantees and protection accorded to foreign investors.
* Moldova: Definition of foreign investors and the forms of foreign investment permitted; establishing enterprises with foreign participation; taxation and incentives; participation in privatization; guarantees and protection accorded to foreign investors; registration.
* Russian Federation: Foreign trade regulations; State privatization programme; sale of convertible currency earnings to the Government; Government programme of economic reforms; new taxes on legal and physical persons; relations of the federal Government with local authorities.
* Ukraine: Definition of foreign investors and the forms of foreign investment permitted; establishing enterprises with foreign participation; taxation and incentives; use of local currency and participation in privatization; guarantees and protection accorded to foreign investors; registration; privatization legislation and programmes.

PRIVATIZATION ISSUES

* Eastern Europe: Environmental law and liability issues.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Czech and Slovak Federal Republic: Recent trends in foreign direct investment.
* Romania: Statistical overview of foreign investment projects registered during 1990 and the first half of 1991.

OTHER ISSUES

* Statistical offices in countries with economies in transition: Names, addresses, and telephone and fax numbers.

No. 12, June 1992

FOREIGN INVESTMENT

* Bulgaria: Law of 16 January 1992 on the economic activity of foreign persons and the protection of foreign investment.
* Russian Federation: Conversion of Russia's military complex: implications for foreign investment; privatization programme in Moscow: prospects for foreign investors; Presidential Decrees announced affecting foreign investment.
* Ukraine: Presidential Decree approves measures to encourage foreign economic activities.

PRIVATIZATION ISSUES

* Russian Federation: Law on mineral deposits.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Slovenia: Growth of foreign investment; principle foreign investor countries.
* Eastern Europe: Survey of Swiss companies' investment intentions: geographical distribution of investment; problems encountered by investors.

OTHER ISSUES

* Chambers of commerce and industry in countries with economies in transition: Names, addresses, and telephone and fax numbers.
* Recent publications.

No. 11, March 1992

FOREIGN INVESTMENT

* Report: Host country incentive measures: a western company's view: General conditions for attracting Du Pont; increasing international competition to attract inward investment; summary table of incentives in some countries where Du Pont has invested; summary table of difference in returns between investments made in western Europe and the USSR; measures which Governments of eastern Europe need to take; how western Governments can help.
* Baltic Republics: Licensing requirements and procedures; rights of establishment; taxation and tax allowances; profit repatriation and the use of profits; ownership of land; protection of foreign investment; overview of investment provisions in the Baltic Republics.
* Belarus: Aim of new foreign investment law; definition of foreign investors and the forms of foreign investment permitted; establishing enterprises with foreign participation; restrictions on foreign investment in particular sectors; taxation and incentives; use of local currency as investment funds; profit repatriation and the use of profits; participation in privatization; protection and guarantees accorded to foreign investors; Belarus Foreign Investment Law compared with the legislation of Kazakhstan and the Russian Federation.
* Commonwealth of Independent States: Treaty on an economic community; summary table of foreign investment and privatization laws enacted in the CIS Republics.
* Hungary: The foreign direct investment environment; investment and legal climate; activities of state bodies, bureaucratic obstacles, etc.; starting up and running businesses; labour problems.

PRIVATIZATION ISSUES

* Albania: Privatization in Albania.
* Bulgaria: Second foreign investment law passed within a year.
* Czech and Slovak Federal Republic: New fiscal incentives for foreign investors; legislation governing entrepreneurial activity.
* Romania: Internal convertibility eases profit repatriation for foreign enterprises.
* Russian Federation: Russian privatization aims for 1992; State enterprises to be mandatorily privatized; enterprises not affected by or excluded from the Russian privatization programme in 1992; participation of foreign investors in privatization; possible restrictions on foreign participation in privatization.
* Ukraine: Law passed on privatization of large industries; parliament discusses draft text of its first foreign investment law; text of Law on Protection of Foreign Investment.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Hungary: Growth and origin of foreign investment; magnitude of operations and economic weight; profitability and taxation; geographical distribution of foreign investment enterprises.

OTHER ISSUES

* Recent publications.

No. 10, December 1991

FOREIGN INVESTMENT

* Soviet Union: Fundamental principles of foreign investment in the USSR; registration and approval procedures; additional guarantees to foreign investors; investment incentives; other provisions; RSFSR law on foreign investment: investment protection; approval and restoration procedures; incentives, concession agreements; free economic zones; Kyrgyzstan.

PRIVATIZATION ISSUES

* Soviet Union: Procedures of privatization; implications for the foreign investor; privatization of State property - housing; President Yeltsin announces plans to free State-controlled prices during the coming year.

STATISTICAL INFORMATION

* Methodological note: Comparison of internationally agreed concepts of FDI stock concepts used in east European economies in transition; concept of FDI; FDI reporting unit: methods and timing of statistical accounting; coverage limitations; composition of FDI stock indicators; valuation: "historic cost" versus market value; valuation: exchange rates used to convert values into a common currency; summary table comparing internationally agreed norms of FDI concepts used in east European economies in transition.
* Czech and Slovak Federal Republic: Selection of western purchases of equity in privatized firms.
* Hungary: Selection of western purchases of equity in privatized firms.
* Poland: Selection of western purchases of equity in privatized firms.
* Ukraine: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign investment; destination of goods and services; operational joint ventures.

OTHER ISSUES

* Institutions and agencies dealing with foreign investment and privatization in the economies in transition: Names, addresses, and telephone and fax numbers.

No. 9, October 1991

FOREIGN INVESTMENT

* Bulgaria: Law on foreign investment; foreign firms not permitted to wholly own enterprises; foreign persons entitled to engage in investment activities are broadly defined; types of activities requiring special Governmental approval are now specified; new procedures for obtaining authorization; right to remit profits including those in local currency; guarantees against expropriation.
* Poland: Law on companies with foreign participation; requirement to seek approval from a Government agency abolished for most types of foreign investments; new formalities for obtaining a permit; Foreign Investment Agency is now dissolved, profits can now be repatriated without restriction; automatic three-year tax holidays have been eliminated; Poland's foreign investment legislation in comparison with other economies in transition; Poland's draft privatization scheme.

PRIVATIZATION ISSUES

* Romania: Commercial companies privatization law.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Romania: Growth and capitalization of foreign investment projects registered during 1990 and the first half of 1991; principle foreign investor countries; industrial structure of foreign investment.
* Foreign investment in environmental protection projects: Capitalization and size of foreign investment; principle foreign investor countries; intra-sectional distribution of foreign investment enterprises.

OTHER ISSUES

* Recent publications.
* Institutions and agencies dealing with foreign investment and privatization in the economies in transition: Names, addresses, and telephone and fax numbers.

No. 8, July 1991

FOREIGN INVESTMENT

* Summary table: Comparative presentation of joint venture legislation in the countries of eastern Europe and the USSR.
* Albania: Proposed amendments to foreign investment law.
* Estonia, Lithuania: Proposals for new foreign investment regulations.
* Romania: Foreign investment law; guarantees compensation in case of nationalization; broadens the concept of property ownership for the foreign investor; grants tax holidays and other fiscal incentives; accords rights to transfer profits and other payments; specifies approval procedures; Romania's new foreign investment law in comparison with legislation elsewhere in eastern Europe.
* Soviet Union: Law on currency regulation; laws on customs code and on customs tariff; the draft "privatization" law; law on foreign investment; proposal for new foreign investment regulations.

PRIVATIZATION ISSUES

* Czech and Slovak Federal Republic: National privatization programme.
* Hungary: Law on Concessions of May 1991; Act on Unfair Market Practices; Act on the Determination of Prices.

STATISTICAL INFORMATION

* General developments in selected economies in transition.
* Czech and Slovak Federal Republic: Growth and capitalization of foreign investment: principle foreign investor countries; industrial breakdown of foreign investment; destination of goods and services.

OTHER ISSUES

* Recent publications.

No. 7, February 1991

FOREIGN INVESTMENT

* Bulgaria: Amendments to Decree No. 56 on Economic Activity; establishment of, and various forms of economic activities; independent economic activity in the territory; agencies, subsidiaries, share ownership; taxation; ownership of property.

* Hungary: Amendment to Act XXIV of 22 December 1990; foreign investors no longer need official approval to establish operations; package of fiscal investment incentives available to foreign investors altered and tightened; new incentives to encourage firms to reinvest their profits.

* Poland: Changes in foreign investment law.

* Romania: Law on commercial companies; repatriation of profits earned by joint ventures; approval procedures.

* Russian Soviet Federative Socialist Republic: New foreign investment legislation.

* Soviet Union: Law on banks and banking activity; fundamentals of legislation on investment activities in the USSR; Presidential Decree on measures to fight economic sabotage and other crimes in the economic sphere.

STATISTICAL INFORMATION

* General developments in selected economies in transition.

* Soviet Union: Growth and capitalization of foreign investment; principle foreign investor countries; industrial breakdown of foreign investment; destination of goods and services; geographical location of foreign investment enterprises; operational joint ventures.

OTHER ISSUES

* Recent publications.
* Index of main articles in issues No. 1 through No. 6 of East-West Joint Ventures News.

Any information for inclusion in the Newsletter concerning conferences and publications on east-west investment should be sent to:

Trade Division
United Nations Economic Commission for Europe
Palais des Nations
14-18 Avenue de la Paix
CH-1211 Geneva 10
Switzerland
Tel.: (41 22) 917 2364 or 917 1234
Fax.: (41 22) 917 0036 or 917 0123
Telex: 41 29 62

Please send you subscription order to the Sales Section, Subscription Department, United Nations Publications, Palais des Nations, CH-1211 Geneva 10, Switzerland (Fax.: (41 22) 917 0027).
The annual subscription is US$ 80

Printed at United Nations, Geneva
GE.94-33544 January 1995–1,100

ISSN 1014-6911